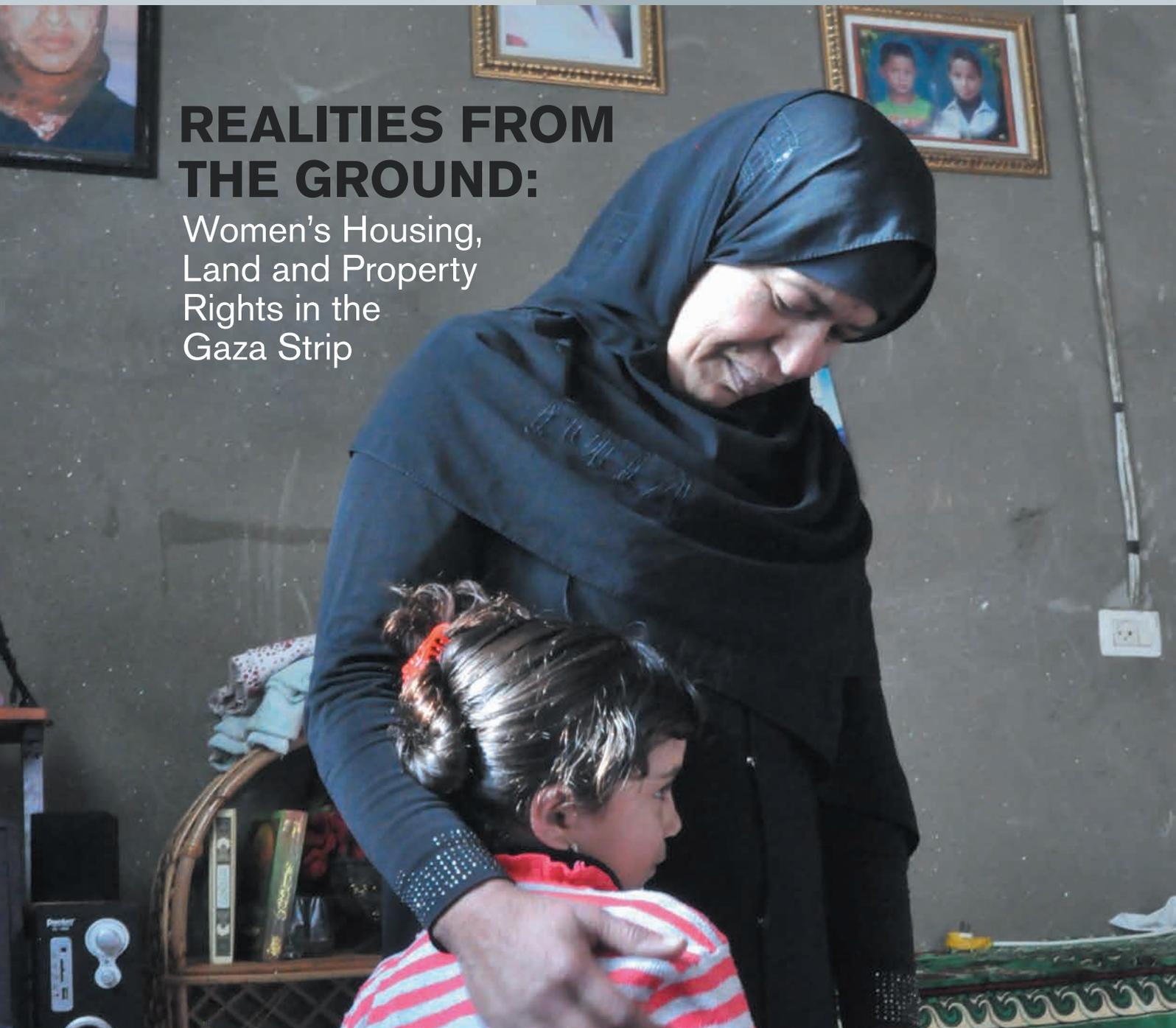




DISPLACED
WOMEN'S RIGHTS
TO HOUSING, LAND AND PROPERTY

REALITIES FROM THE GROUND:

Women's Housing,
Land and Property
Rights in the
Gaza Strip



NRC

NORWEGIAN
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United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory

GAZA STRIP ACCESS AND CLOSURE

DECEMBER 2012

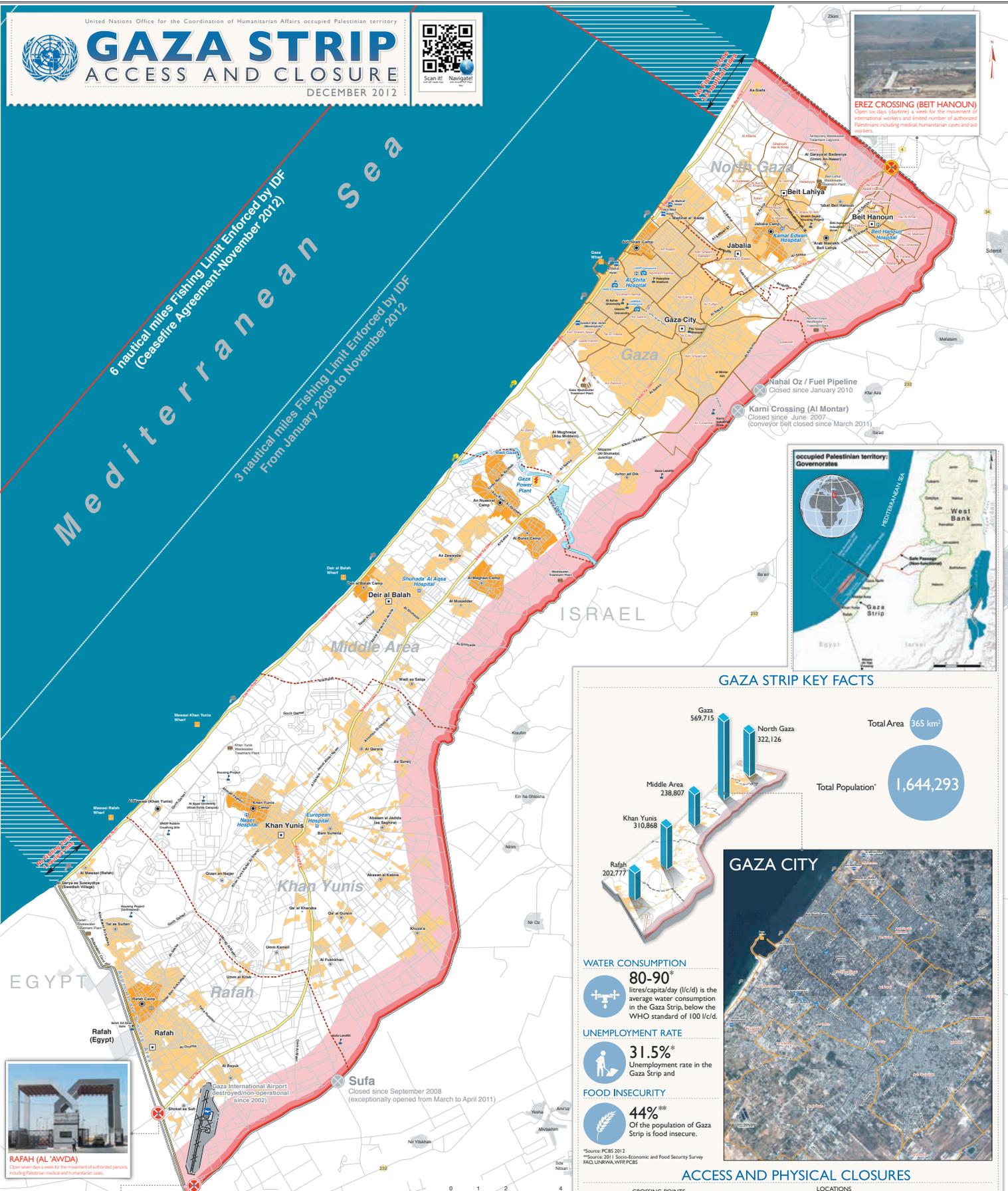


Scan QR or Navigate!

6 nautical miles Fishing Limit Enforced by IDF (Ceasefire Agreement-November 2012)

3 nautical miles Fishing Limit Enforced by IDF From January 2009 to November 2012

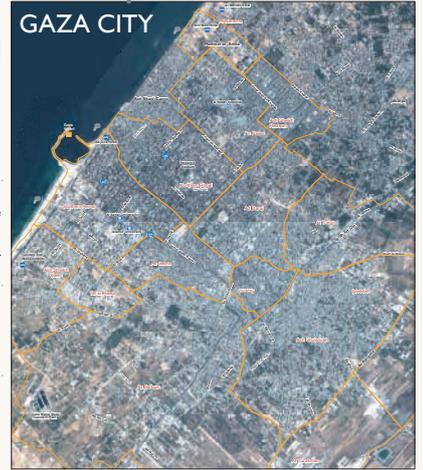
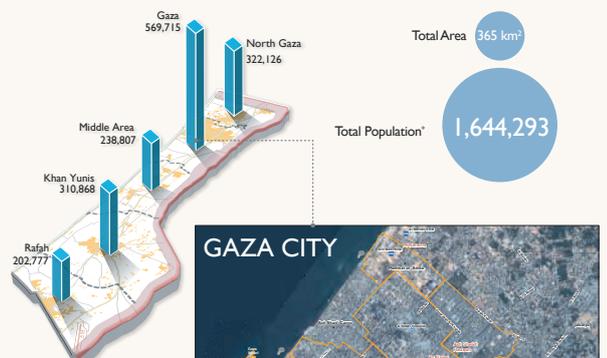
Mediterranean Sea



EREZ CROSSING (BET HANOUN)
Open six days (six times a week) for the movement of international workers and limited number of authorized Palestinians including medical humanitarian cases and aid workers.



GAZA STRIP KEY FACTS



- WATER CONSUMPTION**
80-90* litres/capita/day (l/c/d) is the average water consumption in the Gaza Strip, below the WHO standard of 100 l/c/d.
 - UNEMPLOYMENT RATE**
31.5%* Unemployment rate in the Gaza Strip and
 - FOOD INSECURITY**
44%** Of the population of Gaza Strip is food insecure.
- *Source: PCBS 2012
**Source: 2011 Socio-Economic and Food Security Survey FAO, UNRWA, WFP, PCBS

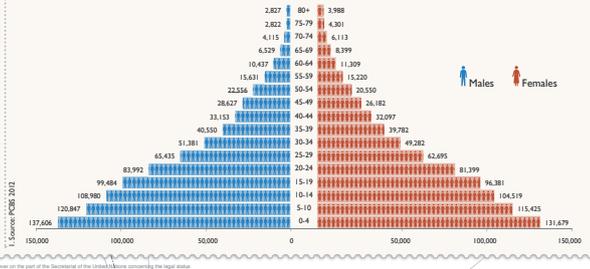


RAFAH (AL 'AWDA)
Open seven days a week for movement of authorized persons, including Palestinian medical and humanitarian cases.



KEREM SHALOM (KARMABU SALEH)
Open five days (six times a week) for movement of authorized goods only.

GAZA STRIP GOVERNORATE POPULATION AND AGE DISTRIBUTION¹



ACCESS AND PHYSICAL CLOSURES

- CROSSING POINTS**
 - Open
 - Closed but Open for Exceptional Cases
 - Closed
- CLOSED AND RESTRICTED AREAS**
 - No-Go Zone (100 metres)
 - Access permitted on foot and for farmers only (100-300 metres)²
 - Risk zone
- FENCES AND BARRIERS**
 - Concrete Wall
 - Fence with Watch Towers
 - Effective Fishing Limit
 - Former Fishing Limit
- ROADS**
 - Main Road
 - Regional Road
 - Local Road
 - Track
 - Philadelphos Corridor
 - Road
- LOCATIONS**
 - UN Compound
 - Damaged Bridge
 - Bridges
 - Hospital
 - Hotel Area
 - Landmark
 - Wastewater Treatment Plant
 - Sewage Outlet (in Constant Use)
 - Sewage Outlet (Overflow Only)
 - Wharf
- PALESTINIAN AREAS**
 - Build-up Area
 - Refuge Camps
 - Hostel Area
 - Main City
 - over 50000
 - 2001 to 50000
 - 1001 to 2000
 - under 1000
- ISRAEL**
 - Israeli Build-up Areas
 - Roads

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REALITIES FROM THE GROUND

WOMEN'S HOUSING, LAND AND PROPERTY RIGHTS IN THE GAZA STRIP

Researched and written by: Hannah Rought-Brooks

Photographs by: Emad Badwan

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Norwegian Refugee Council (NRC)

The **Norwegian Refugee Council (NRC)** is an independent, international, humanitarian non-governmental organisation which provides assistance, protection and contributes to durable solutions for refugees and internally displaced people worldwide.

For more information, please contact kirstie.farmer@nrc.no.



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UKaid
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**NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS**



About this Project

NRC has embarked on a three-year initiative designed to help increase displaced women's access to housing, land and property rights through international and national advocacy. Our evidence base is drawn from NRC's extensive operational experience in 20 countries and includes the analysis of legal cases as well as desk research. The project aims to provide well-researched legal, policy and practice recommendations for the humanitarian community, including practitioners, donors, governments and civil society. In addition, we are looking at our own experience to draw lessons that can help us improve our assistance to displaced women in conflict and post-conflict situations.

This country report is part of the Displaced Women's Housing, Land and Property Rights Project. Other countries featured include Afghanistan, Colombia, Lebanon, Liberia, South Sudan. A forthcoming global report will summarise these country experiences and draw wider lessons for policy-makers about the barriers faced by displaced women as they seek to access their housing, land and property rights.

The project is funded by the UK Government's Department for International Development and by the Norwegian Ministry for Foreign Affairs.

For more information, visit www.nrc.no/womenhlp.

Acknowledgements

Thanks are due to everyone who participated in the researching and drafting of this report, in particular the ICLA staff in Palestine for arranging and assisting with site visits as well as the women's HLP rights team based out of NRC's headquarters in Oslo for their advice on its content. Special thanks to the Palestinian Center for Democracy and Conflict Resolution (PCDCR) for their assistance and sharing their experiences in working with women through customary dispute resolution approaches. Thanks also to Hanan Abu Ghosh who assisted the author in arranging interviews, and with translation in the West Bank. Additionally, a number of Palestinian and international organisation generously gave their time and provided information for this report. In particular, NRC wishes to thank the individuals and families in Gaza and the West Bank who participated in focus groups and interviews and who shared their personal experiences for this research.



NORWEGIAN
REFUGEE COUNCIL

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
Acronyms	6
Glossary of Arabic Terms	7
INTRODUCTION	8
1. HISTORICAL BACKGROUND AND CONTEXT	12
1.1 Ottoman Empire (1516-1917)	13
1.2 British Mandate (1920-1948)	15
1.3 Egyptian and Jordanian Rule (1948-1967)	15
1.4 Israeli Occupation (1967-)	17
1.5 Oslo Accords and the Palestinian Authority (1994-)	18
1.6 Palestinian Parliamentary Elections and Hamas Takeover of Gaza (2006-)	22
2. LEGAL FRAMEWORK	23
2.1 International Legal Protection for Women's Land and Property Rights	24
2.2 Israel's Obligations Under International Law	25
2.3 Legal Status of Palestine	30
2.4 Palestinian Domestic Legal Norms and Compatibility with Women's Rights	32
3. LEGAL MECHANISMS FOR RESOLVING HLP DISPUTES	41
3.1 Nizami (Civil) Courts	42
3.2 The Shari'a Courts	45
3.3 Customary Dispute Resolution (CDR)	47
4. SPECIFIC CHALLENGES FOR WOMEN CLAIMING HLP RIGHTS	55
4.1 Denial of Inheritance Rights	56
4.2 Matrimonial Property and Security of Tenure	61
4.3 Israeli Military Activities	68
4.4 Access to Land	77
4.5 Overcrowding and Inadequate Living Conditions	81
4.6 Registration and Ownership of Land	84
5. CONCLUSION	89
6. RECOMMENDATIONS	92
6.1 To the Israeli government	93
6.2 To the Palestinian Authority and local authorities in the Gaza Strip	93
6.3 To UN agencies and international NGOs	94
6.4 To NGOs and civil society	95

EXECUTIVE SUMMARY

Security of tenure is one of the key tenets of the right to adequate housing, yet for many Palestinian women security of tenure is only achieved through their relationship with men – their fathers, husbands, brothers or sons. For many women, at the end of that relationship either through death or divorce, they will become vulnerable to losing their homes. Society simply does not tolerate women, particularly young women living on their own.

Inheritance is one of the major ways in which women can access land and gain an asset that can provide them with security of tenure, either through ownership of land or acquisition of its monetary value. Although it does not provide equal rights to inheritance, *shari'a* law does provide for women to take an inheritance share, generally half that allocated to a male descendant. There is a degree of confidence that the court system, both *shari'a* and *nizami*, will provide women with their rights to inheritance. But there are many opportunities outside the courts for women, facing social ostracism and sanction, to waive their inheritance rights or accept smaller shares.

In Palestine, the situation is complicated by an on-going military occupation and periodic but serious military operations and on-going restrictions prevent goods and materials from entering Gaza. House demolitions, forced evictions, land confiscation, the Wall, Access Restricted Areas (ARA) and Israeli military operations such as the 2008-2009 Operation “Cast Lead” are all issues that lead to displacement and have an impact on women’s ability to enjoy their housing, land and property (HLP) rights. Restrictions on access to land have also led to a scarcity of land, making it more difficult for women to claim rights to land.

In both the Gaza Strip and the West Bank, long-standing refugee camps are overcrowded and often lack vital services. Women are particularly affected by unsanitary conditions and the lack of water and other resources in their homes as usually they have to remain at home caring for children and elderly relatives. In Palestine’s conservative society even what limited public space exists is not available to them.

While Islamic jurisprudence and the legal system in Palestine provide no overt barriers to women’s ownership or leasehold of housing, land or property, social norms and traditions often act to preclude women from taking full advantage. This means that while the legal framework provides no formal barriers, social and cultural attitudes and traditions in Palestine’s patriarchal society mean that even educated and working women do not own or otherwise have security of tenure in the homes in which they live.

One of the findings of this report is that while women are often knowledgeable about their rights to inheritance and wish to claim their rights,

the consequences for doing so are high. Women face being cut off from their families and this can be a major deterrent to claiming their rights, as well as a major cause of personal and social friction and division. Divorced and widowed women may have no alternative but to leave the homes of their families and return to the homes of their father or brothers, often to overcrowded conditions as well as harassment and control. Their contributions, financial or otherwise, to matrimonial property are unrecognised and undocumented. The report also found clear support for widowed women to remain in their homes, along with some support for divorced women, although serious concerns remain about the consequences of such women living alone. There is scope for more awareness-raising to encourage women to document their contributions and register their interest in land and property.

Palestinian women face multiple layers of discrimination which means that problems of displacement caused by the occupation and conflict are exacerbated by discrimination and cultural attitudes within Palestinian society. Women's legal status and decision-making remain linked to that of a male relative and they are still unlikely to own land or housing or to otherwise have security of tenure in their homes.

The women's movement in the 1990s attempted to grasp the opportunities presented by the formation of the Palestinian Authority to ensure that women's rights were part of the agenda of reform and legislative change. However, proposed reforms have focused on civil and political rights for women, while economic rights, in particular HLP rights have been neglected. More recently, women's groups in both the Gaza Strip and the West Bank have identified that HLP rights, in the form of land ownership or security of tenure are crucial for women's economic independence. Economic independence can, in turn, be crucial for social and political empowerment and involvement in decision making.

The UN Special Rapporteur on adequate housing notes property regimes that recognise joint rights with equal powers between spouses best protect women's right to adequate housing, and to equality.¹ Writing recently about Sri Lanka, the UN Committee on the Elimination of Discrimination against Women (CEDAW) meanwhile urged the government to abolish the head of household concept and recognise joint or co-ownership of land.² It is clear that such a policy, led by governments and international agencies, would lead to greater security of tenure and the protection of women's housing rights.

In Gaza, large-scale projects have been built and more are under construction to provide housing to those whose homes have been destroyed as a result of Israeli military operations. These projects are funded by international donors, and implemented either by local authorities or international agencies including the United Nations Relief and Works Agency (UNRWA). It is of particular concern that international agencies including the UN perpetuate traditions and customs making

¹ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council, 26 December 2011, A/HRC/19/53, para.27

² CEDAW/C/LKA/CO/7 paras 38-39

the “head of household”, almost always male, the recipient of contracts allocating the usage of land or property. There is currently little consideration – though there is openness to discussion – about changing this policy to enable women to benefit from joint security of tenure, even though it could help protect women’s interests in properties in the event of widowhood or divorce. It is critical that rights-based organisations such as UN agencies contribute to women’s rights, including their property rights, on an equal basis to men’s. Agencies should amend their practices to conform to these principles and enhance gender equality.

Women’s ownership of assets, be it property or land, is a crucial element of economic empowerment. It increases participation in household decision-making, expands their range of choices, enables them to deal better with economic loss and crises, and provides them with security and protection if and when they lose access to male income through widowhood or divorce.³ Women who feel secure and able to make decisions at home are also more likely to participate in their communities and societies more broadly.

3 UN Women, *Who Answers to Gazan Women? An Economic Security and Rights Research*, 2011, p.113

ACRONYMS

ARA	Access Restricted Area
CBO	Community Based Organisation
CDR	Customary Dispute Resolution
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
GBV	Gender-based Violence
HLP	Housing, Land and Property
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICESCR	International Covenant on Social, Economic and Cultural Rights
ICLA	Information, Counselling and Legal Assistance
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILS	Israeli Shekel
MoSA	Ministry of Social Affairs
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PCBS	Palestinian Central Bureau of Statistics
PCDCR	Palestinian Center for Democracy and Conflict Resolution
PCHR	Palestinian Center for Human Rights
PLA	Palestinian Land Authority
PLC	Palestinian Legislative Council
PLO	Palestinian Liberation Organisation
PNA/PA	Palestinian National Authority/Palestinian Authority
RWDS	Rural Women's Development Society
PWWSD	Palestinian Working Women's Society for Development
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees
WAC	Women's Affairs Centre
WATC	Women's Affairs Technical Committee
WCLAC	Women's Centre for Legal Aid and Counselling

GLOSSARY OF ARABIC TERMS

<i>Islah Committee</i>	A committee of <i>islah</i> men who resolve disputes. The largest and most influential <i>islah</i> committees in the Gaza Strip are currently the Hamas-affiliated <i>Rabita</i> Committees.
<i>Islah Man</i>	Literally “man of conciliation”; refers to the adjudicators within conciliation processes. While local <i>mukhtars</i> constitute a significant portion of this group, not all <i>islah</i> men are <i>mukhtars</i> .
<i>Mukhtar</i>	A clan elder. The <i>mukhtar</i> traditionally connected villages to formal government, and often play an integral role in customary dispute resolution as the application of “ <i>urf</i> ” (customary law).
<i>Mulk land</i>	Private land.
<i>Nizami</i>	The formal civil judicial system in the Gaza Strip.
<i>Rabita Committee</i>	An <i>islah</i> committee in the Gaza Strip affiliated with Hamas that resolves disputes in accordance with <i>shari’a</i> law.
<i>Shari’a</i>	Religious law and practical ordinances derived from the <i>Qur’an</i> .
<i>Sulh</i>	Literally “conciliation”; refers both to the method of customary dispute resolution in which male elders mediate in accordance with customary law, and to a final reconciliation agreement between parties.
<i>Takharaj</i>	The process by which women waive their rights to land on inheritance in exchange for money.
<i>Takheem</i>	Arbitration.
<i>‘Urf</i>	Customary law.

INTRODUCTION

In 2011, the Norwegian Refugee Council (NRC) began a three-year programme-advocacy campaign on displaced women's housing, land and property (HLP) rights, NRC's primary HLP advocacy priority. A project team was established to direct research and case analysis undertaken by the Information, Counselling and Legal Assistance (ICLA) teams and researchers in six countries: Afghanistan, South Sudan, Colombia, Palestine, Lebanon and Liberia. The aim of the global report is to highlight specific challenges facing displaced women in HLP rights through a review of NRC field practice, in order to identify policy gaps and make recommendations for advocacy and programmatic approaches to strengthen women's HLP rights in emergency response and reconstruction.

This research report focuses on women's HLP rights in Palestine, with a particular focus on the Gaza Strip. The ICLA programme in Gaza has found that women face particular challenges in claiming their HLP rights and are a key vulnerable group who require targeted assistance. This research, therefore, aims to build on the existing evidence and work being done by the ICLA programme in Palestine in order to develop further legal interventions to assist women in accessing their HLP rights.

Background on ICLA Programme

In April 2009, NRC established an Information, Counselling and Legal Assistance (ICLA) programme in Palestine, initially working in the West Bank, including East Jerusalem. In August of the same year, a needs assessment was carried out in the Gaza Strip which identified several areas for legal intervention. Further to this assessment, the NRC Legal Aid Centre was opened in Gaza to provide legal assistance on HLP matters to persons affected by the conflict.⁴ The assistance was particularly focused on assisting those whose houses were demolished or damaged during Operation "Cast Lead". A further and more recent needs assessment was carried out in January 2013.

There remain substantial difficulties with the formal justice system in Gaza, and interviews with lawyers and members of civil society and the judicial system confirmed there are too few judges, while processes are slow and expensive. Consequently, between 70 and 90 per cent of cases are estimated to be resolved using customary dispute mechanisms.

In August 2011, ICLA Gaza and the Palestinian Center for Democracy and Conflict Resolution (PCDCR) entered into a partnership agreement to tackle some of these gaps, particularly in relation to women's HLP rights. This involved capacity building on mediation, arbitration and women's HLP rights for *mukhtars* (traditional community leaders). Through this partnership, a new approach has been developed in response to concerns that the customary dispute mechanism system does not adequately meet the needs of women.

⁴ NRC, Customary Dispute Resolution Mechanisms in the Gaza Strip, March 2012, p10

Funded by the European Union, the project is innovative in its engagement with *mukhtars* in the customary dispute resolution system. PCDCR has built up a network of *mukhtars* who have received training on women's rights, domestic violence and inheritance rights, among other topics. It also employs lawyers who oversee the process and act as the initial point of contact for women who approach the centre. Lawyers refer cases complete with full summaries to *mukhtars* who, with the agreement of complainants, attempt to resolve disputes by working with all parties to negotiate a mutually acceptable agreement. Interviews for this paper indicate the project is having a positive impact, and is welcomed by those involved. Working with lawyers, *mukhtars* are able to resolve HLP disputes non-adversarially through mediation, thus helping to maintain family relations.

By combining the customary dispute resolution mechanism with the resolve and funding to take a case to court where necessary, this project provides a highly effective method of resolving often complex and long-running HLP disputes. It also addresses one of the principle complaints about the customary dispute resolution (CDR) system uncovered in this research: that *mukhtars* lack any formal powers to compel people to engage or enforce decisions. The mere threat of court can provide an effective way of bringing people together to mediate and reach a resolution. Of course, women may also choose not to use *mukhtars* at all before going to court. Either way, NRC and PCDCR help vulnerable women in need of legal assistance to access their HLP rights, including their rights to inheritance and other rights in land and property.

Training is an essential part of the project, especially given the obvious lack of women *mukhtars*. Both PCDCR and the Women's Affairs Centre (WAC) in Gaza are training women to act as informal mediators and *mukhtars*, but more work needs to be done. In the West Bank, women act as mediators and arbitrators already, and there is clearly scope within the political context for women to play an important part in the informal system, too.

Objectives of the Report

The objective of this report is to identify challenges faced by women in Gaza in exercising their HLP rights. On this basis, it also aims to make recommendations for policy and programmatic approaches for NRC and partner agencies to strengthen women's HLP rights. These recommendations will help make sure activities addressing displacement and destruction of homes and property are adapted to women's specific capacities and vulnerabilities.

This report, commissioned by NRC, is part of a larger global study funded by the Department for International Development (DfID) on Durable Solutions and HLP Advocacy, 2011-2014. Strengthening women's HLP rights is an area of humanitarian response in which NRC has developed considerable expertise. It is hoped that durable solutions can be found through the development and documentation of NRC's activities supporting women's security of tenure.

By highlighting key HLP issues and challenges in Palestine, this report

further aims to contribute to improving NRC's global programming for displaced women. While the research focuses primarily on Gaza, comparisons and contrasts with the status of women's HLP rights throughout Palestine – in particular Area C and East Jerusalem – will be drawn where relevant using interviews and research conducted in those areas.

Research Questions

This research seeks to provide evidence and guidance for NRC and policymakers by:

- ▶ Providing a historical background on the development of HLP laws and their classifications in Gaza, with a particular focus on their impact on women.
- ▶ Reviewing the legal framework governing women's HLP in Palestine with a focus on the Gaza Strip, both from an international and domestic legal perspective.
- ▶ Identifying specific challenges facing women in Palestine, with a focus on Gaza, in exercising their HLP rights.
- ▶ Detailing and assessing the existing formal and informal legal mechanisms and structures by which women in Gaza are able to resolve HLP disputes.
- ▶ Assessing the capacity of government and civil society to address challenges to women's HLP rights, and identifying potential partners.
- ▶ Formulating recommendations to improve the legal framework in Palestine, and addressing programmatic gaps to enable NRC and partner agencies to better support women's security of tenure and HLP rights.

Methodology

This report is based on a literature review conducted by an external research consultant, as well as on field research conducted in the West Bank from 15 to 25 October 2012, and in Gaza from 13 to 23 January 2013.

It was not possible to enter Gaza during the initial field research phase, so the researcher conducted 19 face-to-face interviews with actors in the West Bank and seven telephone interviews with actors in Gaza. Actors in the HLP field, particularly those working within women's rights, were interviewed. They included:

- ▶ Representatives from six Palestinian NGOs, women's organisations and grassroots organisations.
- ▶ Representatives from United Nations organisations including UNDP, UN Women and UNRWA.
- ▶ ICLA staff in the Jerusalem office and ICLA staff in the Gaza office by telephone.
- ▶ One *shari'a* court judge.
- ▶ One lawyer from the Palestinian Land Authority, of the Palestinian Authority (PA), based in Ramallah.

- The chief lawyer of the Ramallah Governorate, who also acts as an arbitrator.
- Two lawyers practising in the *nizami* and *shari'a* courts.
- Two affected women.

Two subsequent focus groups were conducted via Skype with NRC office in Gaza. The first focus group included ten representatives from NGOs working on HLP issues in Gaza. The second included 15 women participants.

During the second period of field research in the Gaza Strip, in January 2013, five more focus groups were conducted with the following participants:

- 15 women beneficiaries of PCDCR in Gaza City.
- 33 women in east Gaza City; organised by Zakher, a local community organisation. Due to the numbers only 13 completed a questionnaire, while all participated in the discussions.
- 18 women beneficiaries of PCDCR in Khan Younis.
- 19 men in Khan Younis. The group included some PCDCR beneficiaries.
- 17 *mukhtars* in Gaza City.

All the participants in the focus groups were from Gaza.

A further five beneficiaries or affected women were interviewed individually, and 19 meetings were held with key actors in Gaza including:

- The general director of the Palestinian Land Authority.
- Ministers or representatives from the Ministry of Housing and Public Works (MoHPW) and Ministry of Social Affairs (MoSA).
- UNRWA's shelter coordinator.
- Representatives from five Gaza-based NGOs.
- Two judges working in the Gaza Strip, including a *shari'a* court judge and *nizami* Court of First Instance judge.
- A number of NRC staff, including ICLA staff and lawyers, and representatives from NRC's shelter and education programmes.

In some cases, more than one meeting was held with an individual or organisation.



HISTORICAL BACKGROUND AND CONTEXT

As with much else in the Palestinian legal system and legislative framework, HLP law comprises a patchwork of laws originating from different legal systems. Ottoman and British mandate laws remain in force in the West Bank and Gaza Strip, Jordanian laws are applicable in the West Bank, and Egyptian laws are applied in the Gaza Strip.⁵ Extensive Israeli military legislation remains applicable in the West Bank,⁶ while in East Jerusalem, Israeli domestic law applies as a result of Israel's illegal occupation of the eastern part of the city. While the Palestinian Authority (PA) has introduced legislative changes in some fields, reform is slow. Legislation introduced to reform land law has not yet been implemented.⁷

1.1

OTTOMAN EMPIRE (1516-1917)

Until the end of Ottoman rule in 1917, the legal system in Palestine was based primarily on Islamic law, and many principles relating to HLP are still applicable today. The Ottoman Land Code of 1858 is based on *shari'a* or Islamic law, which says all land is owned by God as the supreme sovereign.⁸ The code has undergone many changes as a result of Ottoman amendments, British Mandatory law and Jordanian and Egyptian law, but its basic definitions have remained intact.⁹

In the early twentieth century, *shari'a* courts in the Ottoman Empire were gradually stripped of their significance, though personal status issues and some aspects of inheritance law remained under their jurisdiction. This remains the case today.¹⁰

In their comprehensive study *Land Law and Islam*¹¹, Siraj Sait and Hilary Lim emphasise that all key Islamic legal materials generally support women's rights to acquire, hold, use, administer and dispose of property, and that Muslim women throughout history have enjoyed an autonomous legal identity and separate property rights.¹² This is in contrast to many Western countries. In England, for example, common law practice did not traditionally recognise the legal existence of the married woman, whose identity and rights to property were submerged under those of her husband.¹³ Ottoman records cited in Sait and Lim's study generally show that women in the property owning classes were treated the same as men with regards to property transactions, although the number of women in this position was probably very limited.¹⁴

5 See web page prepared by the Institute of Law at Birzeit University on the historical evolution of the Palestinian Legal System: http://lawcenter.birzeit.edu/iol/en/index.php?action_id=210

6 NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, p. 14-15

7 Interview with Hanan Alshunnar, Legal Adviser to the Palestinian Land Authority, West Bank.

8 NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, p. 22

9 Ibid.

10 NRC, *The Shari'a Courts and Personal Status Laws in the Gaza Strip*, January 2011

11 Siraj Sait and Hilary Lim, *Land Law and Islam: Property and Human Rights in the Muslim World*, (London: Zed), 2006

12 Ibid, p134

13 Ibid and also see Speech of Lord Wilson: *Out of his Shadow: The Long Struggle of Wives under English Law*, 9 October 2012 available at <http://www.supremecourt.gov.uk/docs/speech-121009.pdf>

14 Sait and Lim, supra note 11, p137

TABLE 1: LAND CLASSIFICATIONS UNDER OTTOMAN LAND CODE

Today, land in Palestine remains classified the same way it was under Ottoman rule: in accordance with *shari'a* principles. The five main types of land defined by the Ottoman Land Code are:

Mulk land (private land): The only category of land where full ownership belongs to the individual. The owner is entitled to dispose of his or her land and to carry out all legal transactions, with some restrictions as specified by the law. The law defines *mulk* as plots in cities and villages considered to be connected to homes whose area does not exceed half a dunam (500 square metres). *Mulk* land is essentially the built-up area of the community.¹⁵

Miri land: This is land that was designated for agricultural cultivation within 2.5 kilometres of the built-up area of the village. The land is owned by the state or sovereign, and the right of use is given to private individuals.¹⁶ *Miri* land whose cultivation is stopped for three or more years without legal justification becomes *mahlul*, or abandoned, and in certain circumstances the government is allowed to put it up for public auction.¹⁷

Mewat land: “Dead land” that was not allocated to anyone, is uncultivated and is more than 2.5 kilometres from the built-up area of the nearest village.¹⁸ All aspects of the land are held by the state, but the individual is allowed to acquire rights to *mewat* land if it has been agriculturally revived and rendered fertile, thus changing its category from *mewat* to *miri*.¹⁹ However, the ownership of the land remains with the state and the person who reclaimed the land enjoys right of usage.²⁰

Metruke land: Land that has been left for public use such as abandoned land or common land. No building may be erected and no trees may be planted, and it may not be bought, sold or cultivated. This can be land that is designated for public highways, for example, or pastures used in common by a number of villages.²¹

Waq'f land: Also known as endowment land, this land is owned by God and can never be inherited or conveyed. The returns from this type of land are to be used to benefit poor people or for a charitable purpose.²²

15 Ottoman Land Code Article 1, as cited in NRC, A Guide to Housing, Land and Property Law in Area C of the West Bank, February 2012, p23

16 Ottoman Land Code, Article 3

17 NRC, A Guide to Housing, Land and Property Law in Area C of the West Bank, February 2012, p30

18 Ottoman Land Code Article 6.

19 NRC, A Guide to Housing, Land and Property Law in Area C of the West Bank, February 2012, p23

20 NRC, Housing, Land and Property Law in the Gaza Strip [unpublished draft provided to author for reference], p.2

21 Ibid, p12

22 Sait and Lim, supra note 11

1.2

BRITISH MANDATE (1920-1948)

By 1920, the West Bank and the Gaza Strip had come under the authority of the British Mandate. Sait and Lim suggest this colonial period led to the deterioration of the status of Muslim women and their ability to exercise their rights. Their study references research from Egypt which found that “Any Muslim woman still had to operate through a male, but he was no longer her agent and she lost her legal personhood.”²³

Women in Palestine became more politically active during this time, and in 1929 the women’s movement was established during the Palestine Arab Congress. The Arab Women’s Association was also founded at this meeting. Palestinian women’s activities moved away from charitable and volunteer work to organising mass demonstrations and public protests against British rule.²⁴

The British reformed the legal system to include aspects of Anglo-Saxon common law,²⁵ and changes were introduced to the Ottoman Land Code. The Ottoman system of land registration was also superseded during the British Mandate.

1.3

EGYPTIAN AND JORDANIAN RULE (1948-1967)

The massive displacement of Palestinians in 1948 and 1949 created a refugee crisis that pushed thousands of Palestinians into refugee camps initially intended to be temporary. Of the 850,000 Palestinians who had been living in what would become the State of Israel, only 160,000 remained on or nearby their land and homes. According to Israeli historian Ilan Pappé: “The rest were expelled or fled under the threat of expulsion and a few thousand died in massacres.”²⁶ Nearly 750,000 Palestinians became refugees and, by the winter of 1948, were already in tents provided by the international community.²⁷ The Gaza Strip, where eight refugee camps were originally established, absorbed between 200,000 and 300,000 refugees²⁸ adding considerably to the area’s population.

After the end of the war in 1949, the West Bank was formally annexed by Jordan and regulated by Jordanian law,²⁹ while the Gaza Strip was supervised and administered by the Egyptian governor general, though never fully incorporated into the Egyptian national system. The legal system operative in the Gaza Strip before 1948 did not significantly

²³ Ibid, p137

²⁴ Ibid

²⁵ See http://lawcenter.birzeit.edu/iol/en/index.php?action_id=210

²⁶ Ilan Pappé, *A History of Modern Palestine*, Cambridge University Press, 2nd Ed, 2006, p137.

²⁷ Ibid, p138

²⁸ Avi Schlaim, *The Iron Wall: Israel and the Arab World*, Penguin, 2001, p50.

²⁹ Between the end of the 1948 war and the 1967 War, East Jerusalem was under Jordanian control. Property that had belonged to Jewish people in East Jerusalem and who had been evacuated from their homes during the 1948 war came under the management of the Jordanian Custodian of Enemy Property.

change under the Egyptian Administration³⁰, and the Egyptian administration largely left British Mandate Laws intact – including those related to informal dispute resolution actors.³¹

The Basic Law issued by the Egyptian administration in 1955 validated most pre-existing law. For the most part, it was the primary piece of legislation governing the Gaza Strip until the Israeli occupation began in 1967.³² But the 1954 Egyptian Law on Family Rights remains the primary source for codified personal status law in Gaza.³³ This legislation is particularly relevant as it contains the law on inheritance which is applicable in the Gaza Strip (Articles 583-630).

It is a different story in the West Bank, where the 1976 Jordanian Law of Personal Status Law replaced the 1951 Jordanian Law of Family Rights. Under the 1976 Jordanian law, there is no provision for the law of inheritance. Rather, the *shari'a* provisions on inheritance are applied directly from the *Qur'an*.³⁴

Refugee camps were built on land that was partially public, though mostly *mulk* (private). In 1960, the Egyptian General Administrative Ruler issued Decree No. 24/1960 specifying boundaries for the refugee camps that have remained unchanged ever since. The United Nations Relief and Works Agency (UNRWA) has been responsible for the management of refugee camps since their inception. Over time, it has stopped tracking who had initial “right of usage” to the land on which they were residing. As a result, many residents of the camp started the *de facto* sale of “rights of usage”, though they could not do so legally. Over the years rights were bought and sold multiple times, as if the land was *mulk* and not public land managed by UNRWA. Today, there remains little difference between the right of usage and the ownership of land.³⁵ These rights passed and continue to pass through the male head of household, with few opportunities for women to gain land or title to property.³⁶

The formal women’s movement struggled to regroup in the face of war, poverty and displacement. Women struggled on an individual basis, too, often displaced and living in refugee camps in the West Bank, Gaza Strip or in neighbouring countries such as Lebanon and Syria.³⁷ Still, women continued to fight on two fronts – the internal, domestic front and the external, political front – by joining various political movements, often in unacknowledged roles.³⁸

Unlike the courts in the West Bank, courts in the Gaza Strip were not integrated into the Egyptian national system, which had abolished

30 See http://lawcenter.birzeit.edu/iol/en/index.php?action_id=210

31 “Informal Justice: Rule of Law and Dispute Resolution in Palestine”, Institute of Law, Bir Zeit University, 2006, p34

32 NRC, Housing, Land and Property Law in the Gaza Strip [unpublished draft], p.7

33 NRC, *The Shari'a Courts and Personal Status Laws in the Gaza Strip*, January 2011, p.11

34 Interviews in the West Bank

35 NRC, Housing, Land and Property Law in the Gaza Strip [unpublished draft], p14

36 Interview with UNRWA gender officer, 24.10.12

37 Nadera Shalhoub-Kalvorkian, *Militarisation and Violence Against Women in Conflict Zones in the Middle East: A Palestinian Case-Study*, (Cambridge University Press, 2009), p12

38 Ibid

1.4

shari'a courts in 1956.³⁹ But because Jordanian law has no provision for inheritance, deferring instead to the *Qur'an*, *shari'a* courts persist in determining the allocation of shares of a deceased person's estate. The same is true in Gaza, where *shari'a* courts retained their jurisdiction over matters of personal status including inheritance.⁴⁰ In both areas, however, that is where their jurisdiction ends: any subsequent disputes that arise are addressed by the *nizami* courts.

ISRAELI OCCUPATION (1967-PRESENT)

Following the war in 1967 between Israel and neighbouring states, Egypt, Jordan and Syria, further displacement of Palestinians occurred increasing the displaced and refugee populations. Israel occupied the West Bank and the Gaza Strip and established a military administration.

Between 1967 and the late 1980s, Women's Committees were established with links to the main political parties. Their agenda was largely focused on the national political movement, based on the belief that "Women would be liberated when society was."⁴¹

The Israeli occupation effectively froze legislation, including personal status legislation, in its pre-1967 state. Consequently, "the personal status law reforms and progressive benefits to women's rights adopted in other Arab states, including Egypt and Jordan, were never implemented in the Gaza Strip"⁴² – or indeed in the West Bank.

The occupation halted the process of land registration which had started under the British Mandate and continued under Jordanian rule in the West Bank. In 1968, the Israeli military commander issued an order freezing all land settlement procedures, including those that had started under the Jordanian government but had not been completed. As a result, nearly 70 per cent of the land in the West Bank remains unregistered with the Palestinian Land Authority (PLA).⁴³ Similarly, General Director of the Palestinian Land Authority Ibrahim Radwan estimates that 70 per cent of land in Gaza is unregistered.⁴⁴ Whatever land had been previously declared as state-owned was considered government property. In the West Bank, this amounted to approximately 530,000 *dunams*.⁴⁵ In Gaza, state land constitutes approximately 112,000 *dunams*, equal to 31 per cent of the overall land in Gaza.⁴⁶

39 Lynn Welchman, Palestine, Pre State Positioning on Family Law, in Andrew Bainham (ed.), "The International Survey of Family Law", p289-307.

40 Interviews with Amal Odeh and Judge Khulood Faqeeh, October 2012

41 Andrea Baron, *The Palestinian Women's Movement: Agent of Democracy in a Future State?*, Critical Middle Eastern Studies, Spring 2002, p.72, quoting Islah Jad, 'From Salons to the Popular Committees: Palestinian Women 1919-1989' in Jamal R Nassar and Roger Heacock, eds, 'Intidada: Palestine at the Crossroads (New York: Praeger, 1990), pp. 127-32.

42 NRC, *The Shari'a Courts and Personal Status Laws in the Gaza Strip*, January 2011, p.11

43 NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, p34 and confirmed in interview with the legal adviser to the Palestinian Land Authority of the PNA in October 2012.

44 Interview, Ibrahim Radwan, Gaza, 17.01.13

45 NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, p38. This also describes the other mechanisms used by the Israeli authorities to confiscate Palestinian land

46 <http://www.pla.gov.ps/ar/?action=pages&id=247>

Since 1967, expropriation procedures have frequently been used for the formation of Israeli settlements, as well as the needs of Israeli settlements such as roads.⁴⁷ By 2010, the number of Israeli settlers in the West Bank had reached approximately 500,000, about 200,000 of whom live in East Jerusalem.⁴⁸ Meanwhile, by 2004, the Israeli settler population in the Gaza Strip numbered 7,000, concentrated in three settler blocs on 56,000 *dunams* of state land⁴⁹, representing 20 per cent of the land in Gaza.⁵⁰

In 2005, Israel withdrew its military personnel and dismantled its settlements in the Gaza Strip but maintained complete control over airspace, maritime access, and non-Egyptian land crossings. By contrast, Israeli settlement activities in the West Bank have only increased in recent years. Closed military zones are used extensively in the West Bank to establish areas that are sometimes used for military training. The Seam Zone, the area between the Wall and the Green Line, was declared a military zone closed to Palestinians, who require a special permit from the military commander. The Seam Zone has a particular impact on women who become isolated from their families and communities and are often unable to access health care and education.⁵¹

OSLO ACCORDS AND THE PALESTINIAN AUTHORITY (1994-PRESENT)

1.5

The Oslo Accords⁵² in the early-1990s resulted in the creation of the Palestinian Authority (PA)⁵³. In 1996, the first elections were held for its legislative body, the Palestinian Legislative Council (PLC). The Oslo Accords state the Gaza Strip and West Bank comprise one territorial unit, and instructed the construction of a “safe passage” between them, enabling Palestinians to move safely and maintain economic and social ties between the two areas. The West Bank was divided into three administrative areas known as Areas A, B and C.

47 Ibid

48 B'Tselem, *By Hook and By Crook: Israeli Settlement Policy in the West Bank*, July 2010, p.5. In East Jerusalem, Israel significantly restricted Palestinian development. Over one-third of East Jerusalem has been expropriated for the construction of Israeli settlements, while a mere 13% is currently zoned by the municipal authorities for Palestinian construction. See UN OCHA, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of 'Illegal' Construction 2* (Special Focus, April 2009) for further details.

49 Elisha Efrat, *The West Bank and Gaza Strip: A geography of occupation and disengagement*, 2006, p172.

50 <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/22/AR2005082200114.html>

51 WCLAC, *Life Behind the Wall: Women's Voices from the Seam Zone*, 2011.

52 In 1993, after failed peace talks in Madrid and Washington, Israel and the Palestine Liberation Organization (PLO) began secret negotiations in Oslo that resulted in the signing of the Declaration of Principles (DOP) on the White House lawn in September 1993. The DOP and subsequent Israeli-Palestinian agreements, collectively known as the Oslo Accords, were based on the principal of mutual recognition of Israel and the PLO.

53 Also known as the Palestinian National Authority (PNA)

The Administrative Division of the West Bank⁵⁴



Area A: Under full Palestinian military and civilian control by the Palestinian Authority. Area A comprises approximately 18 per cent of the West Bank and includes the main Palestinian cities Jenin, Nablus and Ramallah.

Area B: Under Palestinian civilian control and Israeli military control. Area B comprises about 22 per cent of the West Bank and includes most of the built-up area of the small Palestinian towns and villages. In Area B, the Palestinian Authority is responsible for land, planning and construction issues.

Area C: Under Israeli military control, with all powers concerning land held by the Israeli Civil Administration. Area C comprises 60 per cent of the West Bank and includes all of the Israeli settlements, most of the main roads and some 150 Palestinian villages whose entire built-up area is in Area C. Area C also includes hundreds of thousands of *dunams* (tens of thousands of hectares) of agricultural land belonging to villages whose built-up area is in Area B, as well as some houses from those same villages, which have spilled into the area.

Due to the non-contiguous geographical nature of areas A,⁵⁴B, and C, the C areas physically disconnect the territory under PA jurisdiction. Through this arrangement, Israel continues to exercise full control – security, civilian and planning – over most of the West Bank. ⁵⁵ Fragmented legal and territorial jurisdiction established under the Oslo Accords means that Palestinian courts can hear civil and criminal matters arising only in areas A and B – not C.

According to the Oslo Accords, the administration of the Gaza Strip outside of Israeli settlement areas was transferred to the PA. Movement in and out of the territory, control over the seashore and airspace, and other government and administrative authorities such as control of the

54 NRC, A Guide to Housing, Land and Property Law in Area C of the West Bank, February 2012, p.13

55 Bimkom, *The Prohibited Zone, Israeli planning policy in the Palestinian villages in Area C*. (Bimkom 2008), 16

population registry remained under Israel's authority.⁵⁶

With the signing of the Oslo Accords and formation of the Palestinian Authority, many in the women's movement believed the time had come to promote a women's agenda and ensure women's active participation in the formation of a future Palestinian state in order to secure both national and equal rights.⁵⁷ This period can be seen as the opening of the "window of opportunity", in which civil society and the women's movement in particular focused on improving the rights of women within the area of the Palestinian Authority.

In the years since the Oslo Accords, the Palestinian women's movement has developed a women's rights agenda "to improve the legal, social, educational, occupational, and political status of women in all areas of Palestinian society".⁵⁸ However, the directors of two Ramallah-based women's organisations interviewed for this study said economic issues – including women's rights to land and property – had not been given enough attention. Maha Abu-Dayyeh, director of the Women's Centre for Legal Aid and Counselling (WCLAC), said:

Traditionally we have been more involved in social issues and in the reform of family and personal status law. Increasingly, we're now recognising how important it is to see the links with land and property issues in terms of women's independence and freedoms.

The Palestinian Basic Law was ratified by the PLC in 1997 and signed into law by Yasser Arafat in 2002. Article 23 of the Palestine Amended Basic Law 2003⁵⁹ guarantees the right to housing for those without shelter.⁶⁰ The Basic Law also provides at Article 4(2) that the principles of *shari'a* are a principal source of legislation. According to the Palestinian Basic Law, the formal *nizami* and *shari'a* judiciaries represent an independent branch of the PA government.

In 1997, the Palestinian Parliament for Women and Legislation, or Model Parliament, was established by human rights centres, women's centres and women's coalitions⁶¹ "with the aim of proposing Palestinian laws and legislation based on equality and human rights...[and] correcting

56 Diakonia, *The Oslo Agreements*, viewed at <http://www.diakonia.se/sa/node.asp?node=1125>

57 Amal Jamal, *Engendering State Building: The Women's Movement and Gender Regime in Palestine*, *The Middle East Journal*, Volume 55, No.2, Spring 2001, p.260

58 Andrea Baron, *The Palestinian Women's Movement: Agent of Democracy in a Future State?*, *Critical Middle Eastern Studies*, Spring 2002, p.73

59 Available at <http://www.palestinianbasiclaw.org/2003-amended-basic-law>,

60 Other relevant property laws include the Law on Ownership of Apartments, Shops and Floors No.1 of 1996 which provides for the ownership of common areas and registration, and regulations including the Multi-storey Buildings Regulations 1994 and the Safety Rules in High Rise Buildings 2000.

61 Nahda Shehada, *The Model Parliament for Family Law Reform: A Significant Step towards Linking Women's Issues with National Concerns*, (WLMUL pub, Dec 2004), p.137 available at http://repub.eur.nl/res/pub/21667/_Shehada_Model_Parliament_2004.pdf

the discriminatory nature of family law.”⁶² The Model Parliament focused on personal status laws and did not specifically address concerns related to women’s access to property.

The Palestinian Land Authority (PLA) was established by Presidential Decree No. 10 of 2002. The PLA is the formal directorate for the administration and control of lands in Palestine, and is responsible for overseeing: registration of land, including when land is divided on inheritance; the buying and selling of land; the renting of land; and the administration of land and properties belonging to the state.⁶³ In Gaza, the General Director of the PLA manages three departments: land registration, disputed border resolution, and governmental lands. The mission of the PLA is to preserve land, property titles and the ensuing rights of citizens and government, as well as civic and official institutions, through survey and registration in the Land Registry. Its mission also includes the resolution of disputes over land demarcation, and the preservation and proper disposal of public land and property.⁶⁴

When the PLA was created by Presidential Decree in 2002, its powers and authorities were to be specified by a future law. That law has not yet been passed.⁶⁵ However, the three main departments and functions of the PLA can be outlined as follows:

- Land Registration Department: responsible for registering all types of dispositions of immovable property.
- Land Survey Department: responsible for examining maps and plans prepared in connection with land adjudication process, partition, subdivision, first registration and other transactions.
- State Lands Department: responsible for the preservation of state lands, estates and buildings.

The PLA is not responsible for planning and zoning. This responsibility lies with the Ministry of Planning (MoP).

The Ministry of Women’s Affairs (MoWA) was established in late-2003. As stipulated in its Action Plan, the ministry’s mission is “the empowerment of Palestinian women in order for them to subsequently participate and contribute towards the establishment of a democratic Palestinian homeland, and the advocating of an active civil community governed by national and humanitarian values”.⁶⁶

62 Nahda Shehada, *Gender and Politics in Palestine: Discourse Analysis of the Palestinian Authority and Islamists*, 11 U.MIAMI INT’L COMP.L.REV. 3-4 (2003)

63 Interview with Hanan Alshunnar, PLA, 20.10.12

64 Salah Jallad (adviser to the PLA chair), *The Palestinian Land Authority*, available at http://www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/18-SaharJalladOpenSource.pdf

65 Hiba Hussein, Legal Report, *Palestinian National Authority, Land Administration Project, Ministry of Planning*, p.25 March 2008 available at: <http://www.husseini1.com/resources/file/publications/1273744294012/Legal%20Report,%20Palestinian%20National%20Authority,%20Palestinian%20Land%20Administration,%20Ministry%20of%20Planning,%202008.pdf>

66 Ministry of Women’s Affairs, Action Plan, 2004

PALESTINIAN PARLIAMENTARY ELECTIONS AND HAMAS TAKEOVER OF GAZA (2006-)

In 2006, Hamas won the civil parliamentary elections in the PA and formed a majority government within the PLC. Fighting broke out between Hamas and Fatah, culminating in the Hamas military takeover of the Gaza Strip on 14 June 2007. Hamas has exercised control and functioned as the local authority in Gaza ever since.⁶⁷

Following the Hamas takeover, Israel froze the transfer of customs revenues it collected on behalf of the PA. Key international donors also froze aid, leading to a significant deterioration in humanitarian conditions. Israel imposed an economic blockade on Gaza under which only a bare minimum of Israeli-designated “humanitarian” items were allowed to enter the Gaza Strip, and many basic medical supplies as well as educational tools such as pencils were barred. Except for basic foodstuffs, almost all the materials necessary for daily life were blocked from entering Gaza.⁶⁸

As a result of the Hamas takeover, nearly all PA employees in Gaza went on strike and, initially, the judiciary in Gaza ceased to function. From November 2007, the local authorities in Gaza began appointing new Hamas-affiliated judges to replace those on strike, many with little or no experience⁶⁹, and for a time there were no female judges in either the formal *nizami* courts or the *shari'a* courts in Gaza. There are now three female judges in the *nizami* courts.⁷⁰

The Hamas authorities have also imposed a more conservative social order leading to greater restrictions on women's rights in Gaza. In 2010, for example, Freedom House noted reports of women being warned against immodesty, lawyers being forced to wear the veil in courts, female students being forced to wear the veil in schools, and Hamas targeting women's rights activists.⁷¹ More recently, the Hamas authorities banned women from participating in a marathon in the Gaza Strip which led to its cancellation by the organisers, UNRWA.⁷²

67 NRC, *The Shari'a Courts and Personal Status Laws in the Gaza Strip*, January 2011, p.13

68 UN Women, *Who Answers to Gazan Women: An economic security and rights research*, 2011, p23-24

69 Interviews with human rights organisations and women's organisations in Gaza, January 2013

70 Interview with Civil Court Judge, Gaza, 21.01.13

71 Suheir Azzouni, Palestine, p.3. This report is a chapter in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), available at <http://www.freedomhouse.org>

72 Gaza marathon cancelled after Hamas bans women runners, 5 March 2013, <http://www.guardian.co.uk/sport/feedarticle/10686308>

2



LEGAL FRAMEWORK

INTERNATIONAL LEGAL PROTECTION FOR WOMEN'S LAND AND PROPERTY RIGHTS

Women's HLP rights are protected by international instruments and declarations, by regional legal frameworks and by national and local laws. But not all protections treat women equally. Housing rights protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), for example, provide that state parties must recognise the right of everyone to an adequate standard of living and this includes housing.⁷³ However, the wording of the article assumes that all women cohabit with men, or that men are the heads of households, and raises concerns about male-oriented priorities in International Human Rights Law (IHRL).

Elsewhere, the Committee on Economic, Social and Cultural Rights (CESCR) makes a stronger stand for women's HLP rights. From General Comment Number 7:

*Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.*⁷⁴

The Convention on the Elimination of Discrimination Against Women (CEDAW) provides an important framework for gender equality, and recognises that discrimination violates the principle of equality of rights.⁷⁵ It requires state parties to take:

*All appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*⁷⁶

Importantly, Article 5(a) provides that state parties shall:

Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

⁷³ Article 11: "The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of his living conditions. The State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent."

⁷⁴ Committee on Economic, Social and Cultural Rights, General Comment 7 - The right to adequate housing (art. 11.1 of the Covenant): forced evictions (20/05/97), para 10.

⁷⁵ Introduction to CEDAW: <http://www2.ohchr.org/english/law/cedaw.htm>

⁷⁶ CEDAW Article 3

The CEDAW Committee's General Recommendation Number 19 states that gender-based violence (GBV) is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. Further, gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the convention. These rights include: the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; and the right to the highest standard attainable of physical and mental health.

Paragraph 9 of General Recommendation 19 emphasises that discrimination under the convention is not restricted to action by or on behalf of governments and that under general international law and specific human rights covenants, states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, as well as for providing compensation.

The Declaration on the Elimination of Violence Against Women was adopted by the United Nations General Assembly⁷⁷ in 1993, and strengthens the provisions of the CEDAW in relation to the issue of violence against women. Its preamble recognises "the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings." Later, it also recognises that violence against women is a manifestation of historically unequal power relations between women and men that have "led to the prevention of the full advancement of women."⁷⁸ It notes that the eradication of violence requires cross-sectoral action spanning the health, education, social protection and justice fields, among others.

2.1

ISRAEL'S OBLIGATIONS UNDER INTERNATIONAL LAW

In the context of Israel's occupation of Palestine, both International Humanitarian Law (IHL) and International Human Rights Law (IHRL) apply to the West Bank, including East Jerusalem, and the Gaza Strip. While Israel has denied the applicability of many of these legal obligations in relation to Palestine,⁷⁹ the international community has almost universally accepted their application. This was confirmed by the International Court of Justice (ICJ) in its opinion on the legal consequences of the construction of a Wall in the West Bank, which held that the Fourth Geneva Convention (GCIV) (see above) is applicable in relation to Israel's occupation of Palestine.⁸⁰ The ICJ also concluded the

⁷⁷ UNGA Resolution 48/104 of 20 December 1993

⁷⁸ Declaration on the Elimination of Violence Against Women, preamble.

⁷⁹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 43 ILM 1009 para. 90

⁸⁰ Ibid, para. 101

settlements were established in violation of international law.⁸¹

Although Israel evacuated its troops and dismantled its illegally-built settlements from inside the Gaza Strip in 2005, the international community – including, *inter alia*, the UN Security Council,⁸² the UN General Assembly,⁸³ the UN Special Rapporteur on the occupied Palestinian territory⁸⁴, the UN Human Rights Council (UNHRC)⁸⁵ and the International Committee of the Red Cross (ICRC)⁸⁶, continue to regard Israel as the occupying power in its relationship to the Gaza Strip. This is because the rules of international humanitarian law relevant to occupied territories are applicable whenever a territory is under the “effective control” of hostile foreign armed forces.

International Humanitarian Law (IHL) expressly forbids the destruction of private property unless it is absolutely necessary for military purposes (Article 53 GCIV), while the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly constitutes a grave breach of Article 147 of GCIV, and is therefore a war crime.

Furthermore, the ICJ reiterated the views of the Human Rights Committee when it confirmed Israel has obligations under IHRL in Palestine, all of which must be respected without discrimination.⁸⁷ The court found that “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights.”⁸⁸

International Human Rights Law (IHRL) provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy or home, and that everyone has the right to the protection of the law against such interference or attacks (Article 17, ICCPR). The right to an adequate standard of living, including adequate food and clothing, is further protected by Article 11 of the ICESCR. All Palestinians should benefit from the all rights protected under IHRL including Article 17 of the ICCPR and Article 11 of the ICESCR⁸⁹.

Palestinian women's organisations have submitted alternative reports in association with other human rights organisations to the CEDAW Committee, the Human Rights Committee and the Committee on Economic and Social Rights raising concerns about the violation of Palestinian women's rights and the specific impact of Israel's practices and policies on women. The alternative report submitted to the Human

81 Advisory Opinion Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice (ICJ), 9 July 2004, paras. 119-120

82 S/RES/1860 of 8 January 2009

83 A/RES/64//92 and A/RES/64/94 of 19 January 2010

84 A/HRC/7/17 page 2 and the 2010 report in A/HRC/13/53/Rev.1, Para 1

85 Human Rights Council Resolution S-9/1.

86 ICRC, Gaza Closure: Not Another Year, News Release 10/103, 14 June 2010

87 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 43 ILM 1009, paras. 102-113

88 Ibid pp. 50-53.

89 Ratified by Israel on 3 January 1992

INTERNATIONAL LAW AND WOMEN'S HLP RIGHTS

The following international treaties and declarations are relevant:

The Universal Declaration of Human Rights (UDHR): Article 25(1) states that everyone has the right to an adequate standard of living including housing, and Article 17 provides that everyone has the right to own property without arbitrary interference.

The International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 11(1) protects the right to adequate housing and Article 2(2) provides for non-discrimination.

ICESCR General Comments No. 4 and 7 more precisely define the right to adequate housing.

The International Covenant on Civil and Political Rights (ICCPR): Article 17 protects persons from arbitrary or unlawful interference with their home. Articles 3 and 26 provide for non-discrimination and equal protection before the law.

ICCPR General Comment No. 28 specifically addresses the equality of rights between men and women.

The Convention on the Elimination of Discrimination Against Women (CEDAW): Article 14(2) (h) obliges states parties to eliminate discrimination against women in respect of women in rural areas to ensure they enjoy adequate housing. Articles 15 and 16 provide for equality and for equality in property during and after marriage.

CEDAW General Comment No. 21 provides for equality in marriage and family relations.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): Article 5(e) (iii) prohibits discrimination on account of race, colour or national or ethnic origin with respect to the right to housing.

The 1951 Refugee Convention: Article 21 requires all State Parties to provide for access to housing on terms at least as favourable as that provided to all other aliens lawfully in the territory.

The International Convention on the Rights of the Child (CRC): Article 27(3) obliges states parties to provide assistance in the form of housing in cases of need.

The Hague Regulations: Article 43 provides the occupying power must generally respect the laws in force in the occupied territory and is prohibited from destroying property except to the extent needed to maintain orderly governance of the territory and for military necessity.

The Fourth Geneva Convention (GCIV): Article 53 of the Convention, which applies during armed conflict and occupation, prohibits the destruction of private property unless “rendered absolutely necessary by military operations”. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly is a war crime (Article 147 GC IV).

Article 49 of GCIV prohibits the transfer of the occupying Power's own civilian population into the territory it occupies.

Relevant resolutions, principles and guidelines include the following:

Beijing Declaration and Platform for Action: paragraphs 8 and 36 provide for equality, paragraphs 26 and 35 provide for equal access to productive resources, and paragraph 65(b) provides for equal inheritance rights.

Habitat II Agenda and Platform for Action: Paragraphs 25(a), 26, 27, 40 and 46 address: adequate housing; equal access to housing, land and inheritance; legal security of tenure and integrating gender into human settlements.

UN Commission on Human Rights Resolution 2005/25: ‘Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing’.

The **UN Basic Principles and Guidelines on Development-based Evictions and Displacement** reaffirm the importance of exploring feasible alternatives to evictions with affected communities, and of adequate notice and stringent criteria for displacement.

The **Guiding Principles on Internal Displacement** set out the rights and guarantees relevant to the protection of IDPs in all phases of displacement, in the context of equal access to rights and prevention of discrimination.

The **IASC Framework on Durable Solutions for Internally Displaced Persons** recognises the need to address obstacles faced by women in accessing and using HLP assets in durable solutions settling.

The **Principles on Housing and Property Restitution for Refugees and Displaced Persons: “The Pinheiro Principles”** broadened the scope of restitution to include ‘housing, land and property’. Principle 3 provides for non-discrimination and Principle 4 for the right to equality between men and women.

Rights Committee for its 99th session in July 2010 sets out in detail the specific impacts on women of Israel's policies of forced eviction and house demolitions.⁹⁰ The UN Human Rights Committee, in its review of Israel in July 2010, made the following statement in relation to Israel's policies:

*"[T]he Committee is concerned at frequent administrative demolition of property, homes, as well as schools in the West Bank and East Jerusalem due to the absence of construction permits, their issuance being frequently denied to Palestinians... The State Party should further review its housing policy and issuance of construction permits with a view to implementing the principle of non-discrimination regarding minorities, in particular Palestinians and to increasing construction on a legal basis for minorities of the West Bank and East Jerusalem. It should further ensure that municipal planning systems are not discriminatory."*⁹¹

Issues of forced evictions, house demolitions and inadequate housing conditions in Area C, particularly near the Wall and in the Seam Zone, were all raised before the CESCR when it reviewed Israel in 2011 – with women's organisations bringing the impact of these issues on women to the attention of the committee.⁹² Their concluding observations noted a number of serious concerns about Israel's compliance with its treaty obligations, including those pursuant to article 17.⁹³

The committee expressed concern about Palestinians' lack of access to sufficient and safe drinking water and adequate sanitation. It also raised concerns about the continuing destruction of water infrastructure in Gaza and the West Bank including the Jordan Valley, subject to military and settler operations since 1967, contrary to Article 11.⁹⁴ Finally, it stated its concern about the lack of access to agricultural land for Palestinians living near the Wall or in the Access Restricted Area (ARA) in Gaza.⁹⁵

Israel has further obligations under CEDAW⁹⁶. The CEDAW Committee has made it clear in the past that Israel should "give full effect to the implementation of its obligations under the convention in regard to all persons under its jurisdiction, including women in the Occupied Territories".⁹⁷ More recently in January 2011, women's organisations raised issues of house demolitions, forced evictions and inadequate housing in a joint

⁹⁰ Alternative report available at <http://www2.ohchr.org/english/bodies/hrc/hracs99.htm>

⁹¹ Concluding Observations of the Human Rights Committee, 99th Session, 12-30 July 2010, CCPR/C/ISR/CO/3, para. 17.

⁹² Report available at <http://www2.ohchr.org/english/bodies/cescr/cescrs47.htm> and <http://www.wclac.org/english/einside.php?id=141>

⁹³ Concluding Observations of the Committee on Economic, Social and Cultural Rights, 47th Session, E/C.12/Isr/CO/3

⁹⁴ Ibid, para 29.

⁹⁵ Ibid para 12

⁹⁶ CEDAW was ratified by Israel in October 1991.

⁹⁷ See for example, Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by State Parties: Third periodic report of Israel, 685th and 686th meetings, 6 July 2005, paragraph 243 of Committee's report.

report led by WCLAC.⁹⁸ For the first time, the CEDAW committee made explicit reference to women's rights to adequate housing and expressed serious concerns about the continued demolition of property, homes and schools, as well as forced evictions taking place throughout Palestine.⁹⁹ These practices, it noted, "have a serious impact on the development and advancement of Palestinian women, including refugee women, as well as Israeli Arab women, and on their enjoyment of human rights and fundamental freedoms."¹⁰⁰

LEGAL STATUS OF PALESTINE

2.3

The Palestine Liberation Organisation (PLO) was granted observer status by the United Nations in 1974.¹⁰¹ Later, in the Palestinian Declaration of Independence (1988), it declared the commitment of the Palestinian "state" to abide by the rules of the UN Charter and the principles of the Universal Declaration of Human Rights.¹⁰² Until 9 November 2012, Palestine was not recognised as a state by the international community, and for the purposes of international law was a non-state actor. As a result, many international accountability mechanisms were not open to the Palestinians.¹⁰³

On 9 November 2012, Palestine obtained "non-member state observer" status in the UN General Assembly. The resolution was overwhelmingly approved with 138 states in favour, nine against and 41 abstaining. Consequently, Palestine is now in a position to ratify the Rome Statute of the International Criminal Court (ICC) and other IHRL and IHL treaties, bolstering its level of accountability for human rights violations and crimes under international law. An internal report by the PLO issued on 29 October 2012 stated that "joining the [nine core] human rights conventions provides an opportunity for greater diplomatic interaction but entails, at the same time, a higher level of accountability," and therefore recommended "an in-depth study to determine whether any convention shall be ratified by Palestine."¹⁰⁴

The Palestinian National Authority (PNA) has stated its commitment to international law and human rights norms. The Palestinian Basic Law (amended in 2003) provides that the "Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights."¹⁰⁵

98 Available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WCLAC_for_the_session_ISRAEL_CEDAW48.pdf

99 Concluding Observations of the Committee on the Elimination of Discrimination against Women, 48th Session, 17 January – 4 February 2011, CEDAW/C/Isr/CO/5

100 Ibid, para 28

101 Un General Assembly Resolution 3237 (29-D) 1974

102 UNDP, *A Review of Palestinian Legislation from a Women's Rights Perspective*, September 2011, p16

103 Ibid

104 Human Rights Watch, *Palestine: Newest observer state should act on Rights Treaties*, available at <http://www.hrw.org/news/2012/11/29/palestine-newest-observer-state-should-act-rights-treaties>

105 Palestinian Basic Law (amended 2003) Article 10(2)

THE PALESTINIAN BASIC LAW: PROVISIONS RELATED TO HOUSING, LAND AND PROPERTY

Article 9 provides that Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, colour, religion, political views or disability.

Article 21(3) provides for the protection of private property.

Article 23 provides that every citizen shall have the right to proper housing, and that the Palestinian National Authority shall secure housing for those who are without shelter.

Article 9 of the Basic Law commits the PA to gender equality and non-discrimination. Combined with Article 21, which protects private property, and Article 23, which provides the right to housing, it also provides on its face a solid basis for women's HLP rights. According to a Ramallah-based female legal adviser to the PA Land Authority: "There is no discrimination in the Basic Law; the right to property is without discrimination and contained in our constitution (Basic Law)."¹⁰⁶ A senior land arbitrator also confirmed there was no barrier in principle for women to own property or register land in their own names.¹⁰⁷

In March 2009, the Palestinian President's office issued Presidential Decree No.19, which provides for the "universal" ratification of CEDAW. This was an important symbolic gesture, but it remains unclear whether and to what extent CEDAW has been incorporated into the Palestinian legal system as a result. It is equally unclear whether international treaties can be invoked in the Palestinian courts.¹⁰⁸

Two West Bank lawyers interviewed for this research said they did not use CEDAW or other international conventions in legal arguments in land cases, but not on the basis that they were not applicable. Instead, they simply felt arguments based on CEDAW would be unlikely to meet with success. These lawyers and others agreed, however, that training on the practical implementation of CEDAW other international human rights law in domestic legal arguments would be useful.¹⁰⁹

Should Palestine formally sign and ratify CEDAW, the Palestinian Authority will be obligated to submit reports to the committee every five years. It will also be obligated to allow Palestinian women's and human rights organisations to submit shadow reports reflecting their concerns.

It was the general view amongst those interviewed that the signing of CEDAW by the Palestinian President Mahmoud Abbas had very little significance in Gaza. It has not been endorsed by the Hamas authorities

¹⁰⁶ Interview with legal adviser to PNA Land Authority, West Bank, 20.10.12

¹⁰⁷ Interview with Head Lawyer at Ramallah Governate, 18.10.12

¹⁰⁸ UNDP, A Review of Palestinian Legislation from a Women's Rights Perspective, September 2011.

¹⁰⁹ Interviews West Bank, October 2012

and the clear indication from the authorities is that no discrimination exists within law and practice in Gaza and thus no changes are required.¹¹⁰

PALESTINIAN DOMESTIC LEGAL NORMS AND COMPATIBILITY WITH WOMEN'S RIGHTS

Following the establishment of the PA, the PLC began a process of harmonising the legislative framework with a view to enacting laws to be applied throughout the country. This process was disrupted in 2000 with the onset of the second *Intifada* before resuming in 2003, but was suspended again in 2007 as a result of internal conflict between the Hamas and Fatah movements, the arbitrary detention of parliamentarians by Israel and the closure of the Gaza Strip.¹¹¹ Persistent political division ultimately led to the existence of two branches of government – the PA in the West Bank and the Hamas authorities in Gaza – and a failure to unify legislation. Since November 2007, Gaza's 29 Hamas legislators have convened at the Palestinian Legislative Council in Gaza City. They meet as an exclusively Hamas body, since other factions do not recognise their legitimacy.¹¹²

These events and the subsequent difficulties in achieving consensus have meant that little legislative reform or harmonisation has been achieved. As a result, most of the historic laws set out in earlier sections in relation to HLP are also still applicable in the fields of criminal and family law. A draft land law meant to update and unify land laws in the West Bank and Gaza has not yet been passed.

Serious concerns remain about the socially conservative attitudes of Hamas authorities and ever-greater restrictions imposed on women. In 2008, for example, a “unified penal code” was drafted to incorporate a seventh-century Islamic penal code adopting punishments such as amputation, whipping and stoning. The code did not pass into law, but was reintroduced for discussion in 2013. Under this system, persons found to have committed adultery would be subject to execution by stoning. The third reading of the law has not passed, and women's organisations in Gaza believe the issue has been put to rest.¹¹³

Legal Status of Women

Discrimination against women continues to exist within Palestinian personal status law. This is in clear contravention of CEDAW, which provides for the full equality of women in all civil and business matters, and demands that instruments directed at restricting women's legal

¹¹⁰ Interviews with Ministry of Housing and Public Works and Ministry of Social Affairs, Gaza.

¹¹¹ UNDP, *A Review of Palestinian Legislation from a Women's Rights Perspective*, September 2011, p.19

¹¹² International Crisis Group, *Round Two in Gaza*, Crisis Group Middle East Briefing N°24, 11 September 2008, p.11

¹¹³ *Suheir Azzouni*, Palestine, p.7. This report is a chapter in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), available at <http://www.freedomhouse.org>.



capacity be deemed null and void.¹¹⁴ It further sets out the equal rights of women and men with regard to choice of spouse, parenthood, personal rights and command over property.¹¹⁵

Under Palestinian personal status law, women but not men require the consent of a *wali* (guardian) in order to marry.¹¹⁶ “Guardianship” is also required by *shari’a* law, according to the *Shari’a* Court Chief Justice.¹¹⁷ Staff at the Ministry of Women’s Affairs in Ramallah meanwhile told NRC researchers that women require the permission of their husbands or other male relatives to travel with their children or open a bank account for them.¹¹⁸ The interviewee was not positive about PA institutions’ role in supporting women’s HLP rights, and said: “The motivation at the political level to deal with the issues is not there, even at the Ministry of Women’s Affairs. They simply say that *shari’a* law is what we have. We still have problems, like a woman cannot open a bank account for her children when her husband dies – it has to be done by men. Women cannot travel to Jordan with small children unless they have a paper signed by their husbands saying they can travel.”

Palestinian women also lack equal citizenship rights, which are still governed by laws and regulations that pre-date the 1967 Israeli occupation: the Jordanian nationality code (No. 6 of 1945) and its amendments are applied in the West Bank, while the Egyptian nationality code applies in Gaza. Both codes allow only men, not women, to pass their nationality to their spouses or children. In addition, women who marry non-Palestinians lose their citizenship unless they submit a written application to the Ministry of Interior within a year of their marriages.¹¹⁹

Interviews for this report were carried out with the Ministry of Housing

114 CEDAW Articles 1 and 2

115 Ibid, Article 15

116 The law of Family Rights (1954) Articles 11 and 12

117 UNDP, *A Review of Palestinian Legislation from a Women’s Rights Perspective*, September 2011

118 Interview, Ministry of Women’s Affairs.

119 *Suheir Azzouni*, Palestine, p.5. This report is a chapter in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), available at <http://www.freedomhouse.org>

and Public Works, the Ministry of Social Affairs and the Land Authority. All of these bodies responded to questioning by stating emphatically that there was no discrimination against women, that women could own and deal with property the same way as men, and that women faced no extra difficulties in this regard.

The Minister for Housing and Public Works in Gaza was unable to provide precise figures for women's ownership of land, but made an estimate of 15 to 20 per cent. This, however, is in sharp contrast to figures published in a 1999 Palestinian Central Bureau of Statistics (PCBS) survey, which showed only 4.3 per cent of women in Gaza owned or shared a piece of land. The minister added he did not think there were any attitudes that prevented women from owning or registering property in their names, and that inheritance shares were dealt with in accordance with *shari'a* law.

The story was similar at the Ministry of Social Affairs (MoSA), where the Deputy Assistant Minister also believed women faced no difficulties owning property. He did, however, acknowledge that women may face some difficulties in claiming their shares under inheritance despite their *shari'a* rights. In terms of programmes, MoSA does not address this issue – but does specifically target widowed and divorced women for assistance. Widows receive financial aid and are also eligible for food packages, medical insurance and assistance with school fees. Divorced women are also eligible for financial assistance, but the Deputy Assistant Minister emphasised ex-husbands are responsible for providing for their children. That said, the ministry sometimes supports children if their father cannot.

DISCRIMINATORY PROVISIONS ON WOMEN'S LEGAL STATUS ENshrINED IN PALESTINIAN LAW

Article 16 of the Personal Status Law states that in order to ensure the validity of the contract of marriage, two Muslim males or one male and two Muslim females must witness the marriage. This provision enshrines discrimination in the law by providing that the witness of two women is equal to the witness of one man.

Article 9 of the Personal Status Law concerns the concept of guardianship. A male guardian, usually a father or brother, has to agree to a woman's marriage. If neither is available a judge will assume guardianship. Single women are subject to this provision regardless of age. Only women over the age of 18 who have been married before have the right to marry without the permission of a guardian.

As set out above, women are not recognised as full persons in the *shari'a* courts where the witness testimony of a woman is seen as holding less weight than a man, evidencing the inferior legal status of women.

Women’s legal inferiority in Gaza impacts their ability to exercise their HLP rights. Where women do not register property in their own or joint names; when they are not consulted by government or international organisations on their housing needs; when they are not able to claim inheritance rights – all this can be linked to cultural beliefs and traditions, reflected in the law, that women do not have the capacity to make decisions on these issues.

Leaving aside social and cultural practices, it is still questionable whether the Basic Law is enough to bring Palestine in line with the provisions of Article 5 of CEDAW. The same goes for Article 16 (h), which declares State Parties must take measures to eliminate discrimination and ensure equal rights for spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.¹²⁰

Inheritance Law

One of the principle ways in which women are able to acquire and own property in Palestine is through inheritance. As noted earlier, inheritance rights in the Gaza Strip are codified in Articles 583-630 of the 1954 Egyptian Law on Family Rights. In the West Bank, the law of inheritance is not codified. Instead, *shari’a* provisions on inheritance are applied directly from the *Qur’an*.¹²¹

In both cases, women have specific inheritance rights. But a woman will always receive half the shares a man would receive in a similar situation.¹²² This is stipulated in the *Qur’an*:

*“God (thus) directs you as regards your children (inheritance): to the male a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance, if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth...”*¹²³

Sait and Lim note that women’s rights to inheritance under the *shari’a* were an improvement on their pre-Islamic position, and until a few decades ago stood in marked contrast to the less privileged position of women in the West.¹²⁴ They also note that “despite barriers and constraints on women’s access to inherited land and their lesser shares in comparison with men, inheritance remains an importance source of access to land for women.”¹²⁵

120 Article 16(h) CEDAW <http://www2.ohchr.org/english/law/cedaw.htm>

121 Interviews in the West Bank, October 2012

122 Sait and Lim, *Land Law and Islam: Property and Human Rights in the Muslim World*, UN Habitat and Zed Books, London New York, 2006, p.108

123 *Qur’an*, Sura 4, Al Niss (Women), 11

124 Sait and Lim, p.112

125 *Ibid*

While *shari'a* norms generally provide gender asymmetry, the majority of interviewees expressed the view that *shari'a* nonetheless provides one of the most important ways to acquire ownership of land. There was also the view that without *shari'a*'s strict rules on inheritance, women would receive far less or nothing at all. Prevailing discriminatory social and cultural norms in Gaza, suggested some, are the real barrier preventing women from taking their rightful inheritance.

Women's Property Rights on Divorce

The concept of shared matrimonial property does not exist in Palestinian law.¹²⁶ This means that women are usually unable to remain in their homes following divorce or the death of a husband. A UNDP review of Palestinian legislation notes that "when a marriage ends following death or divorce, a wife's contribution to the accumulation of marital assets through work carried out within or outside the home is not recognised unless this is documented."¹²⁷ This was confirmed by the Palestinian Center for Democracy and Conflict Resolution (PCDCR) in Gaza, where an interviewee said that although it was unusual to bring such a case, they had successfully done so on one occasion.¹²⁸ UNDP noted the Family Law Coalition, a coalition of women's and human rights organisations in the West Bank, is seeking a change to the law to grant women the right to assets to which they had made a contribution during marriage. This was confirmed in interviews conducted for this report in October 2012.¹²⁹ There is no legislation in Palestine providing HLP security for women in the event of divorce or widowhood, and social attitudes are largely hostile towards women remaining in their homes unless they have young children.

Divorce is a personal status issue dealt with by the *shari'a* courts. A study by UNDP examining personal status laws in practice states that women in the *shari'a* courts have been able to use rules on alimony to obtain fairer divorce settlements and better living conditions: "as a husband's failure to pay due maintenance to his wife is a ground for divorce, women can use an infringement to bring a range of other demands into the public sphere."¹³⁰ However, it was confirmed by two judges interviewed for this report that any claim or enforcement by a woman for a share in matrimonial property would be made in the civil courts and, as stated above, would require supporting evidence as to her specific contribution.

In 2008, a study was completed by Dr. Hiba Hussein in association with the Ministry of Planning and the international organisation Land Equity International.¹³¹ The project reviewed existing land law, which

126 UNDP, *A Review of Palestinian Legislation from a Women's Rights Perspective*, September 2011, p25.

127 Ibid

128 Interview, PCDCR, Gaza, January 2013

129 Interviews conducted October 2012

130 UNDP, *A Review of Palestinian Legislation from a Women's Rights Perspective*, September 2011, p27

131 Dr Hiba Hussein, Legal Report: Palestinian National Authority Land Administration Project Ministry of Planning, March 2008 available at: <http://www.husseini1.com/resources/file/publications/1273744294012/Legal%20Report,%20Palestinian%20National%20Authority,%20Palestinian%20Land%20Administration,%20Ministry%20of%20Planning,%202008.pdf>

dates back to Ottoman and British Mandate periods. The project also considered the proposed PLC Draft Land Law submitted in 2004 with the aim of harmonising land law between the West Bank and Gaza Strip, and at the same time modernising it, too. This review found that the Draft Land Law had no proper policy basis and was inconsistent with the Palestinian Basic Law.¹³² It also criticised the proposed law for not establishing clear rules for inheritance.¹³³ The study concluded that harmonisation and modernisation were required, but that the Draft Land Law was not well structured and was inconsistent with the Palestinian Basic Law.¹³⁴ This law and subsequent proposed amendments have not been passed into law.

Despite counting 207 pages, Dr. Hussein's study does not once consider the situation facing women, nor does its proposed law reform take women's HLP rights into account. As noted earlier, women's rights organisations have tended to focus on personal status legislation and criminal law in their campaigns for law reform – without including elements that would provide women security of tenure or exclude perpetrators of domestic violence from the home. This could explain why there appears to have been no input from women's organisations into the proposed amendments to land law.

Violence Against Women

Domestic violence is not prohibited by Palestinian law. In 2011, PCBS reported that approximately 37 per cent of married women had suffered at least one form of violence from their husbands – 51.1 per cent in Gaza and 29.9 per cent in the West Bank. In Gaza, 76.4 per cent had been affected by psychological abuse, 34.8 per cent by physical abuse, and 14.6 per cent by sexual abuse.¹³⁵ Women are at least theoretically able to press assault and battery charges against their abusers, but several factors keep them from doing so. Social norms shame women who report abuse to the police and encourage them to remain silent for the sake of their children.

Article 340 of the Jordanian penal code, applicable to residents of the West Bank, and Article 17 of the Egyptian penal code, applicable to residents of Gaza, both offer reduced sentences of as little as six months to men who kill their wives. Neither offers such reduced sentences to women.¹³⁶

As noted previously, the Hamas local authorities in Gaza drafted a “unified penal code” in 2008 that would have reintroduced a seventh-century Islamic penal code featuring punishments such as amputation,

¹³² Ibid, p21-22

¹³³ Ibid, p53

¹³⁴ Ibid p.2

¹³⁵ Palestinian Bureau of Statistics, Main Findings of Violence Survey in the Palestinian Society, 2011, available at http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/el3onf2011_E.pdf. 5811 households were surveyed.

¹³⁶ *Suheir Azzouni*, Palestine, p.5. This report is a chapter in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), available at <http://www.freedomhouse.org>

whipping and stoning. Under this system persons found to have committed adultery would be subject to execution by stoning. The third reading of the law has not passed, meaning the legislation has not been passed into law. However, the draft legislation was again discussed by the PLC in 2013.

Women's organisations in Palestine have by contrast long called for changes to the criminal law that would protect women and girls from all forms of violence. A draft penal law has been prepared by women's organisations that makes specific demands conforming to international standards.¹³⁷

There do not appear to be any provisions within the proposed penal code to provide protection to women by excluding violent abusers from the home. There are no available civil remedies, either. That leaves women seeking protection with one option: leaving home. In the West Bank, refuges are available but can lead to stigmatisation.¹³⁸ In Gaza, a shelter run by the Hamas authorities is viewed with concern by many women's groups concerned by a lack of staff training and fears women are being persuaded to return home to abusive partners.¹³⁹

In 2009, the MoSA opened a shelter for female victims of domestic violence known as the Aman Centre. This might have been in response to the opening of another shelter built by a local NGO, the Center for Women's Legal Research and Consulting (CWLRC), with the support of UN Women and UNDP. Local authorities have not yet given the shelter, known as the Hayat Center, permission to host women overnight. Instead, says the MoSA, the CWLRC and UNDP have agreed to use the facility to provide legal services and counselling during the day.

That local authorities have established a shelter for vulnerable women is of course a positive development. Women at the shelter receive the attention of a social worker and psychologist to help form a plan, and resources are provided to help women find employment – again, both positive. But concerns about the shelter's attitudes and methods have been raised by women's organisations, and were reflected in some of the interviews conducted for this report. It was concerning to hear the MoSA say it thought sending women back to their families was a success, even though the majority of those sent home face economic hardship. It is also problematic that the solution for women who were judged to "have had problems of immorality" – those who had relations or were perceived as having had relations with other men – was to make them get married. It is unclear what training shelter staff have received on addressing the needs of women affected by domestic violence, or what methodology they use to support them.

137 Interviews, West Bank October 2012

138 Interview, UNDP, 25.10.12

139 Interviews, Gaza, 13-21 January 2013

Rights to Adequate Housing

In its 1991 General Comment 4, the CESCR said:

The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace, and dignity.¹⁴⁰

It further stated that to be considered adequate, a home should contain certain facilities essential for health, security, comfort and nutrition.

“**Adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.**”¹⁴¹ ”

Based on this broad interpretation, the General Comment identified seven aspects of the right to housing that determine “adequacy”:

- a. legal security of tenure including legal protection against forced evictions;
- b. availability of services, materials, facilities and infrastructure;
- c. affordability;
- d. habitability;
- e. accessibility for disadvantaged groups;
- f. location;
- g. cultural adequacy (para. 8)¹⁴².

Domestic Presidential Decree No.1 of 1994 provided that laws, regulations and orders in force before 5 June 1967 would continue to apply in the Gaza Strip and West Bank until such time they were unified in one legal framework.¹⁴³ As a consequence, provisions relevant to adequate-housing span those in force from the British Mandate and Egyptian Administration, as well as those from the PNA. They include laws and policies regarding rental property¹⁴⁴, Article 23 of the Palestine Amended Basic Law 2003¹⁴⁵, the Floors, Apartments and Shops Property Law

¹⁴⁰ Committee on Economic, Social and Cultural Rights, *General Comment 4 - The Right to Adequate Housing* (article 11(1)), 13 December 1991, para. 18.

¹⁴¹ *Ibid*, para. 8(b).

¹⁴² General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to adequate housing (Sixth Session. Document No. E/1992/23).

¹⁴³ Birzeit University Institute of Law, *Informal Justice: Rule of Law and Dispute Resolution in Palestine. National Report on Field Research Results (2006)* p.54 available at <http://lawcenter.birzeit.edu/iol/en/project/outputfile/5/a391785614.pdf> (last visited 12 February 2011)

¹⁴⁴ See See Judge Mazen Sisalem, Judge Ishak Muhanna and Sulieman El Dahdoh (eds) *Law Restricting Commercial and Real Estate Rents 1941 and the Law Restricting Housing Rents No.44 1940* (collected together in 1992)

¹⁴⁵ Available at <http://www.palestinianbasiclaw.org/2003-amended-basic-law>, (last visited 15 February 2011)

No.1 1996, the Multi-storey Buildings Regulations 1994 and the Safety Rules in High Rise Buildings 2000.

Despite such laws, much of the housing in Palestine is far from adequate – particularly in rural areas. There are no formal social security or social housing programmes, and the expectation is that families and communities will take care of those without housing. Still, some individuals fall through the net.¹⁴⁶ A lack of access to land, lack of adequate infrastructure and lack of essential services such as electricity and water are also all problems faced by many families. Women can be particularly affected by the resulting issues, which include overcrowding and other aspects of inadequate housing (see Chapter 4).

In her December 2012 report on Palestine, the UN Special Rapporteur on adequate housing (SRAH) noted the Palestinian National Development Plan (2011-13) and the Strategic Plan for the Housing Sector (2011-2013) as measures being taken to address the problem.¹⁴⁷ But the Strategic Plan for the Housing Sector, she was informed, “was still pending comprehensive implementation.”¹⁴⁸ The plan estimates a housing deficit in the West Bank and Gaza of 132,759 residential units, and cites multiple internal problems as well as the Israeli occupation and destruction of homes as obstacles to development. The plan also notes several initiatives to be further developed including revising and reforming laws regulating the housing sector, investing in public and private partnerships, promoting public and private investment in housing, and developing housing policies for people with low income.¹⁴⁹

The SRAH welcomed the adoption of the strategy “but expressed her serious concern regarding the lack of implementation. Given the serious impact of poverty among Palestinian communities, the Special Rapporteur was particularly concerned by the absence of any further strategy to promote access to land and housing for low-income families, or to upgrade the living conditions, including in Palestinian refugee camps.”¹⁵⁰

¹⁴⁶ Observations and interviews conducted by the researcher during period 2008-2011

¹⁴⁷ A/HRC/22/46/Add.1

¹⁴⁸ Ibid, para.62

¹⁴⁹ Ibid, para.62

¹⁵⁰ Ibid, para. 63



LEGAL MECHANISMS FOR RESOLVING HLP DISPUTES

Palestine has three overlapping legal systems: the *nizami* or formal court system; the *shari'a* court system; and the informal system made up of customary dispute resolution mechanisms (CDR). This chapter will consider each system vis-à-vis HLP disputes, but is largely limited to those operating in Gaza. The first part looks at the role and jurisdiction of the *nizami* or civil courts, the second looks at the role of the *shari'a* courts, and the third looks at the role of customary dispute mechanisms.

NIZAMI (CIVIL) COURTS

3.1

Civil courts have jurisdiction over all land claims and disputes according to Article 14 of the Judicial Authority Law, as well as to Articles 27 and 28 of the Code of Civil and Commercial Courts Procedures No. 2 of 2001. Different levels of the court have jurisdiction over different cases depending on the location, type and value of the disputed land. Disputes arising over land in Rafah and Gaza City are in the jurisdiction of the Rafah Magistrate Court and Gaza Magistrate Court respectively, for example. And litigants can pursue claims through several levels of courts, including local Magistrate Courts, Courts of First Instance, appellate tribunals, the Supreme Court, and several specialised courts.

151

The fees in Magistrate's Court are equal to one per cent of the disputed land's value to a maximum of 500 Jordanian Dinar (JD), or about 700 USD. Some types of cases meanwhile have fixed fees, such as claims of expropriation of land, which always cost 50 JD, or roughly 70 USD. Higher level courts all charge 0.5 percent of the disputed land's value (to a maximum of 250 JD, or 350 USD). In Palestine this is a considerable sum, and was cited by many interviewees as a deterrent against women bringing claims in *nizami* courts.¹⁵²

Between 2004 and 2010, according to NRC research, there was an estimated 20 to 25 per cent increase in cases heard before customary dispute resolution mechanisms such as the *Rabita* committees established by the Hamas-affiliated Palestine Scholars League, as opposed to formal *nizami* courts.¹⁵³ However, a civil court judge interviewed for this report stated the courts' workload was higher than ever before, with fewer judges in place to deal with cases. He also said he was regularly forced to adjourn cases for administrative reasons, adding it was impossible to hear all the required evidence at one time given that judges typically hear 35 to 40 cases each day.¹⁵⁴ Consequently, evidence is heard over a period of time, raising questions about how justice can be done between such long gaps, and whether women face increasing pressure over time to drop their claims.

With only 37 judges serving a population of 1.7 million, the need for

151 This section is based in part on research conducted by NRC and seen by this research in draft form. See NRC, Housing, Land and Property Law in the Gaza Strip [unpublished draft]

152 Ibid.

153 Ibid, p.24

154 Interview with *Nizami* court Judge, 21.01.13

more judges is clear. It is also clear from this study's research that many people are turning away from civil courts because of long delays in resolving cases.

A putative shortage of judges existed before 2007, but the situation was exacerbated that year when Hamas took over the Gaza Strip and PA employees including the judiciary went on strike. Hamas' response was to replace the judges with new appointees, many with little or no experience.¹⁵⁵ Prior to 2007 there had been five female judges, but none continued working after the Hamas takeover. The civil court judge interviewed for this report said there were now three, including one in the High Court, and that a recent advertisement had specifically requested female applicants.¹⁵⁶

Many local and international organisations still refuse to recognise the legitimacy of the *nizami* judiciary in Gaza but, perhaps owing to the passage of time, this seems to be slowly changing. A growing number of organisations are now working with the courts, and one human rights organisation that has boycotted them since 2007 recently indicated it would start bringing selected cases before the local courts, although this has not yet happened.

The international community has been slower to come around. Israel, the United States and the European Union (EU) refused to recognise the Hamas authorities as the official government in Gaza, citing Hamas' "involvement in terrorism" and its refusal to recognise Israel or past Israel-PA agreements.¹⁵⁷ And the United States and EU, once the largest donors to the PA, cut off assistance to the government.¹⁵⁸ Meanwhile, counter-terrorism legislation has meant that most of the new judges, including the one interviewed for this report, have had little or no training and only minimal contact with judges from outside Gaza as many Western governments and donors prohibit the provision of training, financial assistance or "material support" to any members of Hamas.

Internal government research on land law and dispute resolution shared with NRC concluded the formal system is not operating as designed and is suffering from decades of inattention. It cited as issues long delays, a backlog of cases, a lack of accountability and professionalism, and high fees charged both by the court and by lawyers conducting the cases.¹⁵⁹ Interviews in the West Bank and Gaza revealed criticisms about the length of time the courts take to make decisions and the cost of the procedure.

An interview with a programme officer working on inheritance rights for the Women's Affairs Centre (WAC) stated her belief that the civil courts are functioning, and are the better way of dealing with inheritance. "Women who have the right will be given it by the court," she said, but

¹⁵⁵ NRC, *Customary Dispute Resolution Mechanisms in the Gaza Strip*, March 2012, p23

¹⁵⁶ Interview with *Nizami* court judge, 21.01.13

¹⁵⁷ Freedom House, *Gaza Strip*, 2012 available at <http://www.freedomhouse.org/report/freedom-world/2012/gaza-strip>

¹⁵⁸ *Ibid.*

¹⁵⁹ NRC, *Housing, Land and Property Law in the Gaza Strip* [unpublished draft]

added that difficulties may arise in how to implement the decision.¹⁶⁰ She said the WAC does not have its own lawyers to provide legal representation, but instead makes referrals to PCDCR lawyers working before the courts.

Organisations in the West Bank interviewed for this research provide legal counselling and assistance with mediation and other informal procedures on inheritance issues, but none provide legal representation before the courts (though they do on other personal status issues). Two interviewees from one organisation said organisations like theirs “cannot afford to represent women in inheritance cases and this is a deterrent for all but the most wealthy women.”¹⁶¹ Another said there is “not much allocated in [the inheritance law] project costs to court cases which are expensive, costing around [4,000 USD], and can be very lengthy.”¹⁶²

COURTS IN GAZA - SLOW AND EXPENSIVE

FINDING FROM
FOCUS GROUPS 1

Many of the women and men in NRC focus groups agreed the court provided a mechanism that could help resolve disputes by compelling disputants to engage. But the vast majority believed the court process was slow and expensive. Female focus group participants often had ongoing cases in the court and were unsure why the process was taking so long.

There are only 37 judges in Palestine's nizami courts. Each day, every one of them hears 35 to 40 cases, inevitably resulting in insufficient time for each case to be considered and the consequent likelihood of frequent adjournments. It is therefore unsurprising that the majority of women in the focus groups had perceptions or personal experiences of a slow nizami court system.

Women were also worried taking cases to court would worsen their

relations with family members. While this was a key concern, many women, particularly PCDCR beneficiaries, nonetheless felt it was more important to pursue their rights. This conviction was driven both by principle and by economic necessity.

By contrast, many of focus group participants were very positive about the role of PCDCR and its lawyers. This could reflect a number of issues. First, PCDCR services are provided for free – a hugely significant issue for women who simply cannot afford to pay legal fees. Second, PCDCR approach combines conciliatory, customary dispute resolution (CDR) techniques – primarily through the involvement of mukhtars (traditional leaders) – with the use of formal courts as a last resort when mediation and arbitration are unsuccessful or not possible. This was confirmed by women interviewed for this report.

¹⁶⁰ Telephone interview with WAC 24.10.12

¹⁶¹ Interview with WCLAC 16.10.12

¹⁶² Interview with PWWSD 22.10.12

THE SHARI'A COURTS¹⁶³

The jurisdiction of *shari'a* courts is usually restricted to matters of personal status such as marriage, custody, divorce and maintenance. According to Articles 4 and 5 of Procedural Law of the Religious Courts 1965, *shari'a* courts also have jurisdiction over disputes related to *waqf* land and inheritance.

Much like the civil system, the *shari'a* court system is divided into tiers: 10 courts of first instance, two courts of appeal and one Supreme Court.¹⁶⁴ Filing a case costs approximately 20 Israeli Shekels (ILS), or about 6 USD. Although this is considerably cheaper than the civil court, it is still a fee that many women cannot afford. Overall costs can be high, with a divorce case costing around 500 USD, for example, while child custody cases cost between 200 and 300 USD.¹⁶⁵ NRC research conducted on this issue found that:

Cases are generally heard within two to three months of filing, though divorce and child custody proceedings tend to be the most complicated and can take longer periods of time. Although backlogs or lengthy processing times in hearing a case do not appear to be issues, complaints about the shari'a system from those interviewed included the willingness of some judges to repeatedly delay proceedings in order to pressure compromise and out-of-court agreements.¹⁶⁶

The *shari'a* court judge interviewed in Gaza for this report was clear that, in his opinion, *shari'a* law gives men and women equal rights in all areas.

“**The rules applied in Gaza regarding rights, inheritance and property are taken from the shari'a provisions on inheritance. Shari'a has given women the right to own property, the complete right to own and right to do whatever she wants with her property as soon as she has reached the age of an adult. She can do whatever she wants with her money without consulting her family and she has absolute right to do with it what she likes.**”¹⁶⁷

He further explained he was personally conducting outreach work giving sermons in mosques and lectures on the issue of women's inheritance rights to ensure men as well as women understand the rights of women under *shari'a*.

A lawyer working with PCDCR agreed decisions made in the *shari'a* court were generally fair to women: “In my experience women are treated fairly, specifically in the *shari'a* courts. Even women without lawyers are referred to us and others to help them get their rights.”¹⁶⁸

NRC's research notes, however, that there are no female *shari'a* court judges. Furthermore:

¹⁶³ See the substantial research conducted by NRC for a comprehensive review of the Shari'a courts in Gaza - NRC, *The Shari'a Court and Personal Status Laws in the Gaza Strip*, January 2011

¹⁶⁴ Ibid, p26

¹⁶⁵ Ibid

¹⁶⁶ Ibid.

¹⁶⁷ Interview, Judge Omar Nofal, Head of the Shari'a Appellate Court, Gaza, 19.01.13

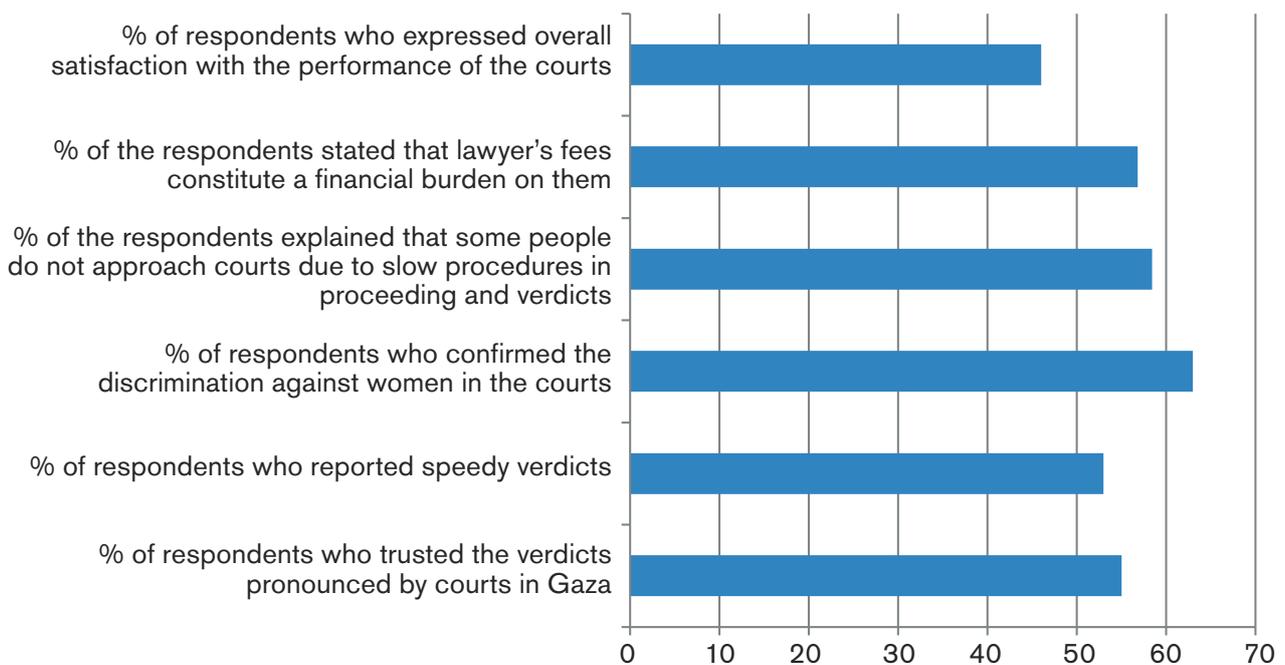
¹⁶⁸ Interview with PCDCR, 15.01.13

While [male judges] may make active efforts to protect vulnerable female litigants, observation of court proceedings indicates that their approach is generally not one based on women's rights or gender mainstreaming. There is a general lack of female representation among the employees of the Gaza shari'a court system, although some women were employed in the shari'a system's Family Counselling Units.¹⁶⁹

There are now three women judges in the *shari'a* court system in the West Bank. The first, Khulood Al Faqeeh, was appointed in 2009.¹⁷⁰ Al Faqeeh told NRC that women's problems are principally related to a lack of awareness around women's rights, as well as a culture where women are shamed for claiming them. She believed the procedures introduced, particularly in relation to inheritance rights, had made real changes and that it was now fairer for women. But she also acknowledged there were still problems with Personal Status Law, which was outdated and had not been amended.

A recent study conducted by the Gaza-based WAC surveyed 747 women and found that 55 per cent trusted the verdicts pronounced by shari'a courts in Gaza, while 53 per cent reported speedy verdicts.¹⁷¹ It is unclear whether this means the remainder did not trust the verdicts and had waited much longer, or whether they did not answer the question or did not know. However, 57 per cent of respondents said lawyers' fees were a financial burden, and only 46 per cent expressed overall satisfaction with the performance of the courts. Perhaps most tellingly, 63 per cent of respondents confirmed they perceived discrimination against women in the courts.¹⁷²

Selected Findings of WAC Public Opinion Poll on Women's Satisfaction on Performance of Courts in Gaza Strip, 2012



¹⁶⁹ Ibid, p29-30

¹⁷⁰ Judge Al-Faqeeh was interviewed for this research on 22.10.12

¹⁷¹ WAC, Opinion Poll on Women's Satisfaction on Performance of Courts in the Gaza Strip, undated.

¹⁷² Ibid

3.3

CUSTOMARY DISPUTE RESOLUTION (CDR)

The historical context set out in Chapter 1 is important in understanding the development of Palestine's customary dispute resolution system, reinforced, at times, by the absence of a central authority or the rule of an occupying power. Under the Israeli occupation, the role of CDR expanded in Gaza and the West Bank as a result of people's reluctance to use the formal courts, which were under the control of the Israeli military authorities. During this time the implementation of penalties was also in the hands of the Israeli military authorities.¹⁷³ More recently, the CDR system has been fostered by both the PA and the authorities in Gaza.¹⁷⁴

In Gaza, these CDR mechanisms consist of facilitated negotiations and *sulh* conciliation procedures mediated by community leaders in accordance with '*urf* (customary law and traditions).¹⁷⁵ These processes tend to rely on customary law, traditional practices, and personal relationships with little or no reference to formal laws and procedures. The research conducted for this study confirmed the importance of CDR mechanisms, with participants in every focus group stating they would likely seek resolution of disputes through customary mechanisms before using the formal justice system.¹⁷⁶

Defining Customary Dispute Resolution



The resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law.¹⁷⁷



Sulh conciliation is described as "a method of dispute resolution through conciliation, based on the accommodation of custom, religion and tribal traditions."¹⁷⁸ The primary conciliators for *suhl* dispute resolution are the *islah* men either individually or working as part of a committee. While the process is called conciliation, the decisions are more akin to arbitration in that they are essentially binding, as a result of intense social pressure as well as, at times, the actual legal enforcement of *sulh* agreements by

¹⁷³ *Informal Justice: Rule of Law and Dispute Resolution in Palestine*, Institute of Law, Bir Zeit University, 2006, p35

¹⁷⁴ NRC, *Customary Dispute Resolution Mechanisms in the Gaza Strip*, March 2012, p12

¹⁷⁵ *Ibid*

¹⁷⁶ *Ibid*, p45

¹⁷⁷ UNWomen, UNICEF, UNDP, *Informal Justice Systems: Charting a Course for Human Rights Based Engagement*, p8 Also see *Informal Justice: Rule of Law and Dispute Resolution in Palestine*, Institute of Law, Bir Zeit University, 2006

¹⁷⁸ *Informal Justice: Rule of Law and Dispute Resolution in Palestine*, Institute of Law, Bir Zeit University, 2006, p14

the police and formal judiciary.¹⁷⁹ Once a *sulh* deed has been signed by the parties, the formal *nizami* courts are likely to uphold the terms of the agreement.

There is lack of standardisation and a failure to incorporate a gender perspective.

In a 2007 Land Disputes Study conducted in the Gaza Strip, nearly 85 per cent of *mukhtars*¹⁸⁰ said women were involved in land disputes, and more than 80 per cent stated women will raise land dispute claims. In the focus group with 17 *mukhtars* conducted for this study, approximately half estimated that land disputes, particularly inheritance disputes, formed more than 50 per cent of their caseload, with four stating the number was closer to 80 or 90 per cent.

This report will not set out a full description of customary dispute mechanisms as there is a separate comprehensive NRC research on the subject,¹⁸¹ but rather provide a summary and some additional information based on the current research.

Main Customary Dispute Resolution Actors and Mechanisms

The following table briefly sets out the roles and functions of the main CDR actors in the Gaza Strip. NRC's research identified four mechanisms for customary dispute resolution. It further identifies that the actors involved and forms applied to do follow strict guidelines or a linear process and many also may be used in combination with one another or part of a broader process.¹⁸²

MUKHTARS: Mukhtars are traditional family leaders and clan elders. They are usually the first actors approached for assistance in dispute resolution. All mukhtars in the Gaza Strip are male, and many (but not all) serve as *islah* men in the resolution of disputes through *sulh* conciliation procedures.¹⁸³ They are appointed by and registered with the Department of Tribes and Reform within the Ministry of Interior, and are assigned to specific families, neighbourhoods, camps, areas, tribes or cities. As of February 2011, there were approximately 320 registered mukhtars in the Gaza Strip.¹⁸⁴ There are several initiatives in Gaza to begin training female mukhtars, including by PCDCR and WAC. While these trainings have been ongoing, the female mukhtars have not been formally accepted or registered as mukhtars and are instead considered community leaders or social workers.

179 NRC, Customary Dispute Resolution Mechanisms in the Gaza Strip, March 2012, p37

180 See table for description of role of *mukhtars*

181 NRC, Customary Dispute Resolution Mechanisms in the Gaza Strip, March 2012, p24

182 Ibid, p35

183 WAC are training a group of women to act as mukhtars, although they cannot formally hold the position.

184 Ibid, p.25-26

ISLAH MEN: The term *islah man* means “man of conciliation” and refers to the traditional mediators within the customary *sulh* conciliation process. The Department of Tribes and Reform has begun registering *islah men* through an application and vetting process similar to that required by *mukhtars*. There are currently 500 registered *islah men*, each of whom may be entitled to a monthly allowance of 800 ILS (about 210 USD). All *islah men* in the Gaza Strip are male,¹⁸⁵ and most are politically aligned with Hamas.

Islah men are chosen for their knowledge of *'urf* (customary law) and previous experience with conciliation procedures. The role of an *islah man* is to serve as a mediator and to seek mutually agreeable solutions to a conflict. In practice, he also serves as an arbitrator and adjudicator if a consensual resolution is not possible.¹⁸⁶

RABITA COMMITTEES: In recent years, the *Rabita* committees have expanded to become the most commonly used actors in the customary dispute resolution sector. Between 2004 and 2010, the *Rabita* committees processed more than 41,000 cases. In 2004, there were three or four such committees. By 2012, there were approximately 40 with some 500 members. All *Rabita men* are *islah men*, and are appointed only after applying to a Hamas-affiliated charitable organisation called the Palestine Scholars' League in the Gaza Strip. Half the 500 *Rabita* committee members receive a monthly payment of 800 Israeli Shekels (ILS), or about 210 USD, from the Ministry of Interior. All services provided by the *Rabita* committees are free of charge.

Committees first attempt to resolve matters through conciliation. If this fails disputes are referred to binding arbitration – though, as noted below, land disputes cannot be addressed through arbitration and must go to the courts for determination. Decisions reached by *Rabita* committees are enforced by the police in the same manner as formal judicial rulings.¹⁸⁷ These committees do not exist in the West Bank.

ISLAH COMMITTEES: *Islah* committees generally encompass a number of factional groups of *islah men* working through a committee. They range in size from five to 10 members, and are based on geographical area. Approximately 25 Fatah affiliated committees were established in the post-Oslo period through the direct intervention of the PA. Since the political division between Fatah and Hamas, these Fatah-affiliated *islah* committees have mostly been disbanded in Gaza and are relatively inactive. For the most part, they have been replaced by the Hamas-affiliated *Rabita* committees.

¹⁸⁵ *Ibid* at 27, it is noted that in 2006, 25 women held the position and engaged in conciliation procedures, but that this was discontinued by the Hamas authorities.

¹⁸⁶ *Ibid*, p27-28

¹⁸⁷ *Ibid*, p31 See also for further information regarding the *Rabita* Committees.

The first step in nearly every instance of CDR in Gaza is for disputants to approach a local *mukhtar*. Equally, *mukhtars* themselves can initiate an intervention. NRC estimates *mukhtars* resolve nearly 90 per cent of disputes through facilitated negotiation. Only the remaining 10 per cent proceed to *sulh* conciliation or the formal courts.¹⁸⁸

However, the research conducted for this study revealed women have significant reservations about the ability of *mukhtars* to resolve disputes. Many women in NRC focus groups had encountered *mukhtars* who were unable to compel the other party to engage in the CDR process. Another concern was whether *mukhtars* would maintain the interests of the family rather than the individual needs of the parties, or indeed whether they were able to remain impartial.



188 Ibid

FINDING FROM
FOCUS GROUPS 2LIMITATIONS OF CUSTOMARY DISPUTE
MECHANISMS AND *MUKHTARS*

The role of the customary dispute mechanism, and therefore the role of *mukhtars*, has increased in significance in the years since the political division in 2007. An estimated 70 to 90 per cent of cases are resolved primarily through the customary system.¹⁸⁹

Fifteen women in NRC focus groups said they had been to *mukhtars* for assistance with a dispute, although the figure may be higher given that others had sought assistance from PCDCR, which initially uses *mukhtars* to try and resolve disputes in a friendly way prior to issuing claims in the courts. Many said the *mukhtars* tried their best, but if the other side refused to co-operate there was nothing they could do. Said one woman: "I went to a *mukhtar* and he went to the other party and back to them but they refused to speak about the issue. It wasn't his fault." Other women shared similar experiences.

The customary system therefore has real weaknesses. First, disputants have no obligation to co-operate with the process. Second, there is no way to enforce an agreement once it has been made unless it has been backed up by a court order.

The men in the focus groups largely agreed, citing *mukhtars'* lack of powers to force both parties to engage with the dispute resolution. One man said, "When there are problems, first you try the family, and if they can't solve it, you go to the *mukhtars*. If they can't solve the problem then you have to go to the court."

The Rabita committees, formed by the Palestine Scholars League and affiliated with Hamas, have broader powers of enforcement. Cases are often referred to them directly by the police, as well as by the formal nizami courts. Decisions made by Rabita committees are enforced by the police in the

In the West Bank, meanwhile, some organisations suggested the role of the *mukhtar* had diminished.¹⁹⁰ Despite this, at least one organisation working on inheritance disputes said it was working with *mukhtars* as part of its project, as well as providing training to them. A *shari'a* court judge in the West Bank expressed concerns about the *mukhtars*: "They don't know about the rules and technical side." She agreed with the view that the role of the *mukhtar* had diminished: "It is only a title now, and we now have local councils which are part of the government."¹⁹¹

PCDCR, a partner organisation of NRC, has adopted an approach that combines the mediation and negotiation techniques of *mukhtars* with the professional expertise of lawyers to attempt to resolve HLP disputes.

¹⁸⁹ NRC, Customary Dispute Mechanisms in Gaza, January 2011, p.24

¹⁹⁰ Interview, women's organisation, 24.10.12

¹⁹¹ Interview, 21.10.12

same manner as formal judicial rulings.¹⁹² Still, in disputes between two family members that don't involve a criminal matter, Rabita committees also lack the power to compel all parties to engage.

The women in the focus groups did not distinguish between the different types of CDR mechanisms, though they did talk about *mukhtars* and committees, or "reconciliation committees". None of them spoke about different or more effective solutions being provided by these committees. Instead, one said she had experienced violence from a Rabita committee member for trying to claim her inheritance rights. She told the group: "My brother-in-law is on a Committee of Reconciliation and he came and beat me when he heard I was claiming my rights."

Another reservation is that *mukhtars* are often part of the extended family and, as such, may have their own interest in preventing a conflict or in keeping land in the family. One woman said: "The *mukhtar* told me that

me that I am part of the family and he won't intervene. He was part of my extended family."

The women in the second focus group did not include beneficiaries from PCDCR, but had been invited by an east Gaza-based community organisation called Zakher. They also had reservations about using CDR mechanisms, but in their case this was because of the shame associated with talking about issues such as inheritance and HLP rights. One woman told the group she would not go to a *mukhtar* for fear she would damage her family's reputation. Another said: "Everyone will talk and say it's shameful and say my family is bad."

The women and men in all of the focus groups were far more positive about the process used by PCDCR, which integrates the technical expertise of a lawyer with the possibility of a friendly and amicable agreement through a *mukhtar*, backed up by the possibility of court action.

They also provide training to a number of *mukhtars*, 10 of whom were selected to work specifically on HLP cases. PCDCR believes the training has had a real impact, making the *mukhtars* more gender aware. In a focus group conducted with 17 *mukhtars* for this research, all were very clear that women had inheritance rights they should claim. Many were also enthusiastic about the training they had received, and recommended that the programme be extended and expanded.

The following case study features a woman who has been attempting to resolve her inheritance dispute with her brothers for almost 40 years. Although it highlights some of the *mukhtars*' weaknesses, she is now hopeful a process initiated by PCDCR with a *mukhtar* will have positive results.

¹⁹² Ibid, p.31

CASE STUDY 1

INTISAR MOHAMMED ABU ELIAS 22 JANUARY 2013

“ I have five brothers, and although one now lives in Jordan, they are all united in not wanting me to get my inheritance. They offered me an empty room and said that I could live there without my children. The room was about nine square-metres. ”

Intisar, 65, is married with two sons and four daughters. Both her sons and one of her daughters are married, while her remaining daughters live at home with her and her husband.

“I have had problems for many years with my brothers because I want to claim my inheritance share. My father died in 1975 and while my mother was still alive, we tried to sort the inheritance share out between us in a friendly way. Unfortunately, my brothers just didn't want to give me my fair share. I have five brothers, and although one now lives in Jordan, they are all united in not wanting me to get my inheritance. They offered me an empty room and said that I could live there without my children. The room was about nine square-metres.

“I live in a very small house with two bedrooms, a bathroom and a kitchen, with a temporary zinc roof that lets the water through when it rains. The situation is very difficult.

“I've been trying to resolve the dispute with my brothers for many years and have had help from *mukhtars* on many occasions but my brothers just won't co-operate. They haven't spoken to me or had any contact with me for many years now. I feel very sad but what can I do?

“I heard about PCDCR from friends and people I knew. They told me about the centre and that it had a good reputation and so I wanted to try and see if they could help me with my inheritance claim.”

Intisar approached PCDCR on 2 January 2013. A lawyer listened to

her problem and checked through her documents, which included her father's death certificate and a document from the Palestinian Land Authority that confirmed the land remained registered in her father's name and had not been altered since his death. He then sent a summary of the case to a *mukhtar* with whom PCDCR works, and requested he look into whether an agreement could be reached with the brothers.

The *mukhtar* tried calling one of the brothers but received no response, so he went to the house instead. When that didn't work, he was finally able to speak to one of the brothers at his place of work. The *mukhtar* explained his role and the role of PCDCR. He said he was looking to reach a friendly resolution, but that they would go to court if this was not possible. The brother said they would offer Intisar a share in a flat that was shared by her two sisters. A further meeting has been arranged to discuss the way forward, and to see whether the brothers will give her a fair share.

After the *mukhtar* has had his meetings he will write a report for PCDCR recommending a resolution – or that the case be taken to court. The lawyer estimates the value of Intisar's share is at least 12,500 JD (about \$17,650 USD).

“If they give me that amount I will be very happy,” she said. “I can use this money to build an extra room so we can have more space and also to improve the roof. I think the threat of court makes a difference. They won't do anything otherwise.”



Alternative Dispute Resolution

The civil court system does not include a mandatory element of alternative dispute resolution (ADR), but several provisions for the voluntary use of ADR exist. Arbitration Law No.3 of 2000, which applies in both the West Bank and Gaza, provides for the establishment of a panel of arbitrators certified to work with the applicable law on a given topic. The court will enforce the arbitral award, and also provides limited grounds for appeal of the decision.¹⁹³

According to Article 2 of the Arbitration Law No.3 of 2000, arbitration is not available for any matters concerning criminal law, inheritance or family law. This means land disputes deriving from divorce or inheritance cannot be legally arbitrated.

In 2002, *Tahkeem* or “arbitration” centres opened in accordance with priorities identified by the PA Ministry of Justice. Concerns about these centres were widespread, and after the replacement of nearly all Ministry of Justice personnel in Gaza in 2007, the centres were isolated.¹⁹⁴ NRC’s research notes there are now no formal court-linked arbitration centres in the Gaza Strip.¹⁹⁵

¹⁹³ NRC, Housing, Land and Property Law in the Gaza Strip [unpublished draft], p19. See also NRC, Customary Dispute Resolution Mechanisms in the Gaza Strip, March 2012, p39-43 for a more detailed description of these processes

¹⁹⁴ NRC, *The Shari’a Court and Personal Status Laws in the Gaza Strip*, January 2011, p41-42

¹⁹⁵ Ibid

4



SPECIFIC CHALLENGES FOR WOMEN CLAIMING HLP RIGHTS

Many of the challenges facing women in Palestine are similar or the same in Gaza and the West Bank, despite the differences in the legal system outlined above. While this analysis will focus primarily on Gaza, the following section covers both Gaza and the West Bank, and identifies differences where and when they exist. For example, women in Gaza are affected by more intense Israeli military action and the ARA or “Buffer Zone”, whereas women in the West Bank are affected by administrative house demolitions and the Wall.

Some of the challenges are gender-specific, such as the denial of inheritance rights and difficulties over security of tenure faced by divorced or widowed women. Others are conflict-related and impact-specific: home demolitions, forced evictions, the Israeli blockade and military operations affect both men and women, but have a gender-specific impact. Often, these issues are multi-layered and multi-faceted, which is illustrated in some of the case studies documented for the research.

It should also be noted that while Islamic jurisprudence and the legal system in Gaza provide no overt barriers to women's ownership of property, social norms and traditions often trump legal rights when it comes to women's HLP.

DENIAL OF INHERITANCE RIGHTS

4.1

Difficulties for Muslim women may arise where conservative readings of the Shari'a are intertwined with gender-discriminating customary norms, which are presented as God's immutable word.¹⁹⁶

Shari'a law generally provides that females receive a share equal to half of that which falls to a comparable male inheritor. A daughter, for example, will receive half the amount of her father's estate that would go to her brother. Despite the legal right to inheritance shares, almost all of those interviewed for this report identified the denial of those rights as one of the most important issues faced by women in relation to their HLP rights. Maha Abu-Dayyeh of WCLAC said inheritance laws are a key issue for women wishing to exercise their HLP rights, and that a lack of female land ownership, usually acquired through inheritance, “is a very big concern as without their own resources, women remain dependent and particularly if they are in an abusive relationship, it makes it very difficult to leave.”

HIGH LEVEL OF AWARENESS OF WOMEN'S RIGHTS TO INHERITANCE

FINDING FROM
FOCUS GROUPS 3

Almost all of the women in the focus groups were aware they had a right to an inheritance share, and many articulated that inheritance was their right under *shari'a* law.

This may relate to the awareness campaigns that have been initiated in Gaza by women's organisations and others such as PCDCR.

¹⁹⁶ Siraj Sait and Hilary Lim, *Land Law and Islam: Property and Human Rights in the Muslim World*, (London: Zed), 2006, p131

The legal framework for inheritance is based on the *Qur'an*, which provides very detailed formulas for assigning shares of an estate among family members. It is the job of the *shari'a* court to undertake this process and draw up inheritance deeds. The *mukhtars* who participated in the focus group for this study were all clear that women should claim their inheritance rights, granted under *shari'a* law. One *mukhtar* commented, and the majority agreed, that “those who are against women’s claims to inheritance are against *shari'a*”. The process before the court reflects the law and the formulas provided by *shari'a*, but there are many opportunities both outside and inside the court for women facing the threat of social ostracism and sanction, to waive their inheritance rights or accept a smaller share.

Takharaj is a court-endorsed procedure by which women waive their rights to land in exchange for money. Khulood Al Faqeeh, a *Shari'a* Court Judge in the West Bank, stated: “It should be a sales operation but in fact women are not getting their money in exchange for their shares. It can be an illusion – it should be a sale but is not because no money changes hands.” In 2011, an executive decision from the High Judicial Council made significant changes to the *Takharaj* procedure. One of the key problems was that women would be brought to the court shortly after their relative had died, when they were still grieving, and be put under pressure to waive their rights to the land by their brothers. The time limit has now been changed so that the process cannot be initiated until four months has passed since the death. According to Khulood Al Faqeeh, in order that the value of the land is clear and that the woman is shown to understand what is happening, she stated that the *shari'a* court in the West Bank must now:

1. Ask women whether they know the value of the land they are forfeiting. If they do not, this would demonstrate the sale of the land is not effective.
2. In the event women do not know their land’s value, they should be made to go to the municipality or village council to specify their properties.
3. Three experts must then estimate the price of the land, confirming it in a letter that is given to the court. This letter needs to be signed by three men as well as the municipality, and a court fee must be paid.
4. Notice must be placed in the newspaper regarding the case and her intention to waive her right to the land.

The Special Rapporteur on adequate housing cited this measure as a protocol implemented to help women retain their inheritance shares and protect them from losses as a result of reduced valuations.¹⁹⁷

The procedure, which is certainly a step in the right direction, is not however applicable in Gaza and no similar procedure exists. Further, once shares have been determined inheritors are free to renegotiate their shares, which are often converted to cash amounts. This is the stage where women are usually placed under familial and community pressure to give up their shares in favour of their brothers.

¹⁹⁷ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council, 26 December 2011, A/HRC/19/53

According to existing data a minority of women take their full legal shares. A 1999 PCBS survey found that 47 per cent of women in Gaza received none of their inheritance share, while another 15 per cent received only part.¹⁹⁸ The same survey indicated the problem was even worse in the West Bank, where 73 per cent of women reported not receiving any of their shares. A smaller 2009 survey carried out by WAC in Gaza found that 23.8 per cent of women were being denied their right to inheritance, while 62.5 per cent did not receive any type of external legal advice.¹⁹⁹ The numbers could indicate a growing awareness among women of their legal rights. They could also indicate the dire economic situation among Palestinians in Gaza that has left many women with no choice but to claim their rights despite the consequences.

The biggest barriers stopping women from claiming their inheritance rights are cultural and societal attitudes. There is a perception that when women marry outside of the family, they have married strangers and that inherited family land is then seen as being transferred to the husband's family. There can also be pressure placed on women not to marry at all, to protect the land and keep it within the family. Ilham Sami, the secretary of a grassroots women's organisation in Safa in the West Bank, summarised the issue:

Women are ostracised and ignored if they claim their land. They are abandoned by their families. The society rejects women who ask, and they feel shame if they claim. The culture depends on men having power. Brothers are the ones who support the family and they are afraid they will lose this.²⁰⁰

MOST WOMEN FACE SOCIAL ISOLATION FOR CLAIMING INHERITANCE RIGHTS

FINDING FROM
FOCUS GROUPS 4

All of the women in the focus groups believed women should claim their inheritance rights, which indicates there has been success in raising awareness among women about their rights to claim inheritance under *shari'a* law. Despite this, serious issues remain. The vast majority of women who have claimed their rights have lost their relationships with their brothers, and others have not claimed their inheritance for fear of this happening.

Two out of three focus groups

with women were comprised of beneficiaries of NRC's partner, PCDCR. Of these groups' 33 participants, 26 were facing inheritance disputes with their families and were pursuing their right to inheritance against opposition from their brothers or other family members. All but two had faced difficulties with their families as a consequence of claiming their inheritance rights at one point or another. The women shared examples of how this manifested itself in practice:

¹⁹⁸ Statistics cited in UN Women, *Who answers to Gazan women: an economic and rights research report*, 2011 p115

¹⁹⁹ Women's Affairs Centre, *Women and Inheritance: Cause and Effect*, 2009 cited in NRC, *The Shari'a Courts and Personal Status Laws in the Gaza Strip*, January 2011, p25

²⁰⁰ Interview West Bank, 22.10.12

FINDING FROM
FOCUS GROUPS 4

“My family haven’t spoken to me for two years. They threw my things out of the house.”

“My family does not speak with me anymore.”

“I am facing some trouble in addition to permanent boycott from my brothers.”

“The family threatened that I will lose all relations with them.”

“I have no contact with my brothers.”

“My family haven’t spoken to me for two years. They threw my things out of the house.”

Despite all the difficulties with their families, the women were clear that they wished to claim their rights, and would carry on with the process they had started. One participant said: “I don’t care about the reaction of my family, I just want my rights. If they get angry I will carry on anyway even though they say it is shameful.”

The motivation behind inheritance claims is often economic necessity. Women feel it is vital to claim their rights in order to improve the social and economic situation for them and their children. Some women said they needed money in order for their sons to marry, others in order to remedy overcrowding in their homes.

One focus group was made up of participants invited by Zakher, a community-based organisation in Gaza City. This group had not received any specific training or legal assistance on inheritance issues and significantly there was a much lower level of education, with none of the women being educated beyond primary school

level. It was very clear the women in this group were much more reluctant to claim their inheritances, and only two had taken the step of consulting a *mukhtar*. One woman said she was afraid to ask for her rights because she was scared of her uncle. Others talked about trying to sort out problems with their families directly, and not wanting to take them to court for fear of the consequences, in addition to “shyness” or embarrassment.

All the participants in the men’s focus group felt it was right for women to claim their inheritance rights, but most also believed women would face problems in doing so. One reason why, they said, was that when married women inherited land their families felt it would be going to a “stranger”. Consequently, married daughters often do not get a share of the inheritance. The men were also clear that women, afraid of being ostracised, do not come forward to claim their rights. One man from a Bedouin family said:

I am a Bedouin and there are strict traditions: the father divides the land for the brothers and gives part to the girls, but it’s not fair because he has 70 acres and he gives the girls one. But at the same time, the women accept it and think it is shameful to complain. They don’t get angry and don’t complain.

Another participant said women are sometimes given land in a dangerous or inaccessible area such as the ARA.

The *mukhtars* interviewed for this research also identified a list of problems, by no means exhaustive, faced by women claiming their HLP rights. They include:

- Brothers or other family members do not want the land to go outside the family when the sister marries;
- The family follows the traditions of ancestors rather than *shari’a*;

- ▶ Hatred or ill will between a woman's husband and her family;
- ▶ Greed on the part of the brothers or other family members.

MANAL EKRAM ALI WAHBA 16 JANUARY 2013

Manal married for the second time in 1993. She is now widowed with an 18-year-old son and 14-year-old daughter from her second marriage. When they met, her second husband was 75, and had eight sons and three daughters from a previous marriage. Initially there were no problems, and Manal and her husband lived with five of the sons in relative harmony. But their relationship soured when Manal became pregnant and the sons grew concerned about her and her child's rights to inheritance.

"During my pregnancy, they were persuading their father to divorce me. I went to Egypt to visit my family and came back to Gaza in my fifth month to find he had been to court to get a divorce. He changed his mind when I was there, and said that he wanted to have my child. The divorce didn't go through and I came back with him into the house. In the beginning the sons were angry, particularly when I gave birth to a son, but then they did nothing and accepted the reality. I stayed and then later gave birth to my daughter. Because of my husband's age – he was 87 when he died – I acted as a nurse to him for most of this time.

"One year after my husband died in 2004, his sons forced me out of the house. They said it was their house, that their father had sold it to them, and that I had no rights to claim what was theirs. They said

that my son and daughter could live with them and they would bring them up. I felt I had served their father like a nurse for 10 years and then they wanted to kick me out. I now have health problems and difficulties with my liver.

"Initially I didn't do anything. I lived in a small apartment and worked to support my children, waiting until they were grown up as I wanted them to support me in claiming my and their rights.

"In March 2012, when my son was 17 years old, I went to the mukhtar and he tried with the brothers, but they said that we had no rights. The mukhtar then brought me to PCDCR, which he knew because he had trained and worked at the centre. PCDCR tried a process with the mukhtars, but the brothers wouldn't co-operate."

At this stage, Manal and PCDCR, as part of its NRC-funded project, decided to take the case to court. There have been three sessions at the court so far, and a notice has been published in the newspaper to inform the three sons who are abroad that the case which is ongoing.

"I am still living in a small two-room rented house and the situation is bad for me and my children because I can't work because of my health," said Manal. "But I am hopeful that I will get my rights and succeed in the end."

CASE STUDY 2



"One year after my husband died in 2004, his sons forced me out of the house. They said it was their house, that their father had sold it to them, and that I had no rights to claim what was theirs."

4.2

MATRIMONIAL PROPERTY AND SECURITY OF TENURE

“... [W]omen generally lack security of tenure. This is largely a result of gender-biased laws which at their best only protect *married* women and at their worst do not protect women at all; legal systems which are inaccessible to women or which privilege customary law over statutory law; land and house titling systems which grant title to men rather than women or which require payment for land/houses which women cannot afford; and discriminatory lending or credit policies”²⁰¹

Security of tenure is one of the key tenets of the right to adequate housing, yet for many women security of tenure is only achieved through their relationship with men – their fathers, husbands, brothers or sons. When relationships end, either through death or divorce, many women become vulnerable to losing their homes. Highly dependent on male breadwinners to access income and assets, they are also likely to be thrust into poverty.²⁰² Many become dependent on support from the Ministry of Social Affairs (MoSA).²⁰³

Divorced women, including victims of domestic violence, will be expected to leave the matrimonial home and return to the homes of their fathers or brothers. Soraida Hussein from the Women’s Affairs Technical Committee (WATC) summed up the problem as follows:



Women are seen as the property of society and of men. In the family home they are the property of brothers or fathers, then of their husbands, and if they divorce or are widowed they are returned back to their original owners.²⁰⁴



The concept of shared matrimonial property does not exist in Palestinian law, effectively denying women any legal claim to housing.²⁰⁵ This means women are usually unable to remain in their homes following divorce or the deaths of their husbands.

Mona Shawa, Head of the Women’s Unit at the Palestinian Centre for Human Rights (PCHR), said it is not acceptable in Gaza society for women to live on their own. For widows, she said, the only way that it would be possible to stay in the matrimonial home is if she married her dead husband’s brother.

There are “very, very few cases” of divorced women living on their own, she said, adding it is simply not considered acceptable. “Cultural and social attitudes are such that family would not accept that their daughter lives on her own, especially if she’s young,” she said. Shawa believed this was the case even for women who are educated, working and earning their own money.

201 UNCHS (Habitat). *Women’s Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview* (Nairobi, 1999), pp. viii.

202 UNWomen, *Who answers to Gazan women: An economic security and rights research*, 2011, p.113

203 Interview, Ministry of Social Affairs, Gaza and also see UNWomen, *Who answers to Gazan women: An economic security and rights research*, 2011, p.113

204 Interview, WATC, 25.10.12

205 UNDP, “A Review of Palestinian Legislation from a Women’s Rights Perspective”, September 2011, p25.

SOCIETY DOES NOT ACCEPT YOUNG WOMEN LIVING ON THEIR OWN

FINDING FROM
FOCUS GROUPS 5

The majority of both women and men in the focus groups believed widows should be able to remain in their homes after the death of their husbands. However, detailed discussions revealed a more complicated picture, with beliefs being affected by whether the widow had children and how old she was. A similar picture emerged in relation to divorced women remaining in their homes, although there was less sympathy for these women. One participant said “it would be impossible.” Another said that “if she is young and has no children, the community and family will refuse and say it is not acceptable.” It was a very strongly held view that a young woman who had no children would not be able to stay in the house, and that society's attitudes strongly held that it was unacceptable. There was more acceptance of the idea that older widowed and divorced women should have more rights to remain in their homes.

Many in the group felt that while society was against women remaining in their homes in these situations, it would in fact be better if women had more of a choice. The consequences for many women returning to their parents' or brothers' home was also a significant issue which many in the groups raised as a concern. Women who returned to their families' homes stated that

they feel they have no control or influence, particularly in relation to how their children are raised, and the lack of independence and restrictions they felt in their husbands' homes may simply just transfer to their own families' homes.

In discussions with the second female focus group, participants felt a campaign on widows' housing rights would be important, and that there should be more of a choice for women in this situation.

The male focus group was asked to explain why women are largely unable to remain in the matrimonial home following divorce or the death of her husband. The reasons given included:

“She goes back to her family to marry again.”

“There is no reason but she has to go back.”

“Our traditions and cultures are against this.”

“Unfortunately it is our traditions.”

“Other people will think she is weak and she will be vulnerable.”

With this group, the concern lay with women under the age of around 35. Older women, participants agreed, should be able to live in their homes after death or divorce.

CASE STUDY 3

SANA AWNI ASHOUR 16 JANUARY 2013



Sana married 25 years ago and had three sons and two daughters. The oldest is 25 and the youngest is 14.

“My problem is with my husband,” she said. “We lived for 12 years in Saudi Arabia and during this time I worked as a teacher and he used to take my salary. He bought real estate back in Gaza and registered it in his name.

“We moved back to Gaza in 1998 and in 2003 he married a second wife. When it first happened I was very distressed and went back to my family. I also tried to get a divorce but the court advised me that I shouldn’t because I had children. Although the younger children would have stayed with me, my older children would have gone to their father and I really didn’t want that. I was also under pressure from other people not to get divorced, so I returned to my husband’s home.

The arrangement is that I live upstairs with my children and the second wife lives downstairs.

“We had many problems. He didn’t treat us fairly – he used to take her out and cared more for her children than for mine – and my children felt jealous. He also wouldn’t treat us fairly financially, and although I was working at times with centres giving training, it was not regular work and we didn’t have enough money.

“One parcel of the land he had had bought in Gaza was used for a building and the other was used for agriculture. Both pieces of land were registered in my husband’s name. At the time he married his second wife I was worried about my situation, so we reached an agreement through an Islamic organisation of mediators that one-third of the land was mine. This didn’t reflect the value of what I had put in: I had contributed

In 2012, the Palestinian Working Women’s Society for Development (PWWSD) launched an advocacy campaign in the West Bank on the issue of women’s right to housing, as well to remaining in the home after divorce. The campaign is focused on advocacy rather than lobbying for law reform because the PLC remains non-functioning and ineffective. A lawyer from PWWSD confirmed that during the legal counselling provided to divorcing women the option of remaining in the matrimonial home is not discussed, as there is no legal precedent and they have not used international laws such as CEDAW to attempt to make this argument.²⁰⁶ Others interviewed felt that setting legal precedents would be an important part of any campaign to allow women to remain in their homes.²⁰⁷

In Gaza, there does not appear to have been any similar advocacy campaign. However, lawyers have attempted to claim women’s matrimonial property rights through the process of documenting and proving their contributions to the land and to the property. The following case study does not concern a divorced or widowed woman. Instead, it

²⁰⁶ Interview with PWWSD lawyer 22.10.12

²⁰⁷ Interview with women’s organisation director, 25.10.12

around 75,000 dinars (approximately \$105,850 USD).

"I kept silent for some time, but then my husband refused to help with the cost of my son getting married. I am unhappy with the way he treats my son. He is 19 and should be studying but my husband takes him out to work on the land and treats him very badly. First I went to the *Rabita* Committees but he just told them I had no rights. My husband speaks very well and convinced them he had arranged an arbitration with my brother that confirmed the land was his. The Committee said there was no solution."

Sana approached PCDCR to claim her HLP rights in January 2013. Within weeks a *mukhtar* brought her husband to the centre, where a lawyer explained the arbitration from her brother was not valid because she had not given him power of attorney nor signed the document. The lawyer told her husband that the document

was not legal and could not be implemented.

"We have had three mediation sessions with the lawyer, which the *mukhtar* attends to ensure my husband attends," said Sana. "We have reached a preliminary agreement with the help of the centre and the lawyer: I will keep the one-third of the land and be given the ground floor of the building where I am living. Also, one-third of the land will be unregistered so it can be inherited by my sons and daughters. We are still mediating on this, and he has still not agreed to it."

"Although it is not everything it would be better than what I had before, and would secure my rights in my home. The lawyer says the discussions with my husband are not easy, and my husband denies that I gave him the money. But my husband is just making excuses. I am still worried because he hasn't yet signed the agreement. If he doesn't I will go to court to claim my rights."

“My problem is with my husband. We lived for 12 years in Saudi Arabia and during this time I worked as a teacher and he used to take my salary. He bought real estate back in Gaza [with my money] and registered it in his name.”

describes the insecurity of tenure faced by a woman whose husband had married a second wife, along with her determination to claim her entitlement to the land and property to which her earnings had contributed.

Divorce and Domestic Violence

Housing security is vital to a woman's ability to leave a violent relationship. However, an interview with a representative of UNDP confirmed that procedures for victims of domestic violence are inadequate:

“In terms of protection, the procedures are to take her out of the home. This leads to stigmatisation for being away from her home and her family, and she is seen as associating with ‘bad people’ in safe houses such as prostitutes. Often what can happen is that men are then bound by customary law to stay away or not to behave in such a way.”²⁰⁸

208 Interview, UNDP, 25.10.12

The housing options are few and the consequences great for women who wish to separate from their husbands, even where there is domestic violence. UNDP in the West Bank is working with the Family Protection Unit of the PA police to help tackle the issue, but the representative said there is no operations guidance on this issue. Further, she said, the Jordanian penal code does not provide any guidance on what should happen with housing in situations of domestic violence, and the new draft Penal Code doesn't include any provision to protect women's HLP rights in abusive situations. Equally, the Egyptian Penal Code in Gaza provides no protection for women in such situations. Instead, said the representative, "the full burden of action falls on the woman's shoulders."²⁰⁹

Women who leave the matrimonial home and return to the homes of their families also face problems. Reem Nairab from the WAC in Gaza told NRC that whether women can stay at all depends on their brothers or fathers.²¹⁰ Khaled Mansour, a gender officer from UNRWA, gave an example from one of the social workers working in the West Bank health centres of a woman who was regularly seen after being beaten by her husband. She received help in obtaining a divorce and returned to her father's home. But she was not accepted by her family, who forced her

FINDING FROM FOCUS GROUPS 6

WOMEN SUFFERING DOMESTIC VIOLENCE CANNOT REMAIN IN THEIR HOMES, BUT THIS SHOULD BE CHANGED

It is of particular note that women responding to questionnaires in two focus groups said divorced victims of domestic violence should not be able to remain in the matrimonial home. There are a number of possible reasons for this. First, there is currently very little provision or protection for victims of domestic violence, and no laws that provide for the exclusion of male perpetrators from the matrimonial home. There is no equivalent, for example, of the United Kingdom's "non-molestation" and "occupation" orders, which enable a court to exclude a violent partner from the home on the grounds of behaviour and harm. A woman remaining in the home would therefore have to remain living with her violent husband

or ex-husband. Not surprisingly, most respondents found this unacceptable. Second, married women in Palestine often live in the homes of their husbands' families. Again, it is understandable that many respondents would feel this is not an ideal situation.

In more detailed discussions with the groups, however, all the participants agreed it would be preferable for men to be excluded from the house in the event of domestic violence, so long as the necessary legal provisions allowed this to happen. The majority believed the law should be changed to enable women who have been victims of domestic violence to remain in their homes.

²⁰⁹ Ibid

²¹⁰ Telephone interview with WAC, 24.10.12

to return to her husband where she was in an even worse position than before. This case highlights the link between GBV and women's HLP rights, yet organisations seem to be failing to make the connection in their programmes and interventions. Feeling safe and secure in your home and having access to legal mechanisms to ensure that safety is key to protecting against GBV, whether in the marital home or in a refuge. There are 18 UNRWA legal aid centres dealing with GBV in Gaza. At the time UNWRA was interviewed by NRC, those centres were working on some 700 cases relating to physical violence, psycho-social or emotional abuse. Not a single one of them, said UNWRA, related to women's HLP rights.²¹¹

International Organisations Perpetuating Gender Discrimination

According to the Special Rapporteur on adequate housing, property regimes that recognise joint rights with equal powers between spouses best protect women's right to equality and adequate housing.²¹² It is clear that such a policy, led by governments and international agencies, would result in greater security of tenure and stronger HLP rights for women. But in Gaza, international agencies including the UN instead perpetuate traditions and customs that mean only the "head of household" – almost always male – is the recipient of the contract or undertaking allocating the usage of land or property.

In the West Bank, an UNRWA representative spoke about the policy of registering homes in the names of the male heads of household rather than in the name of the woman or in joint names. While the property is not formally registered with the Palestinian Land Authority, there is UNRWA documentation, and the right of usage to the property passes down through the male line. In Gaza, UNRWA confirmed that this is the case with new properties which are being allocated to households whose homes were destroyed or damaged in Operation "Cast Lead" or in other Israeli military operations. For new homes and allocations, UNRWA use a document called an 'undertaking' which sets out the details of the beneficiaries' obligations and responsibilities towards the property they are being allocated. At paragraph four of the document it states the condition that: "I understand that the housing unit has been provided for the benefit of all members of my family who are registered on my registration card." As UNRWA registration cards are held in the names of the – usually male – head of household, it is evident that the beneficiary of the property will also be male. The document provides for a signature by the beneficiary but no other signatures are required.²¹³

The UNRWA representative said that if a man divorces his wife, "this is a family matter, and usually she will return to her family." While this

211 Telephone interview with UNRWA Gaza

212 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council, 26 December 2011, A/HRC/19/53, para.27

213 The Shelter Technical Instructions which provide further explanation regarding the allocation procedures for compensation and homes for staff refer interchangeably to "beneficiary" and "family" yet do not at any point refer to the necessity of discussing the process with others including women in the family, or require signatures from anyone other than the beneficiary.

particular UNRWA representative felt that women would not want to have their names jointly on undertakings, suggesting it would cause problems with husbands, he did agree there needed to be research on the issue to ascertain women's points of view.²¹⁴

FINDING FROM FOCUS GROUPS 7

JOINT NAMES WILL INCREASE SECURITY OF TENURE

In a focus group with 17 women held immediately after the interview with UNRWA, this issue was discussed. All the women agreed they would like to have their names jointly on the documentation, giving them equal rights in the home. They also agreed new homes should be allocated in the names of both husbands and wives. One woman said "The man signs and the woman should also sign because the home is for both of them."

This illustrates that while wishing to respect cultural and social traditions may be offered as a justification given for maintaining "head of households" as the custodian of property rights, this is not necessarily a true reflection of the views of half of the society. Instead, they promote and maintain discriminatory practices that prevent women from acquiring HLP rights, including security of tenure.

Pinheiro Principle 4.2 says states should ensure that HLP restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of households as an explicit component of the restitution process.²¹⁵ This provision is designed to combat sex discrimination that occurs when only male heads of households are recognised as rights holders, leaving women without legal control over what should be their property. Again, it is for this reason that the Special Rapporteur on adequate housing notes that property regimes which recognise joint rights with equal powers between spouses best protects women's right to adequate housing and to equality.²¹⁶ It is clear that such a policy led by governments and international agencies would lead to greater security of tenure and protect women's HLP rights.

There is a window of opportunity following periods of conflict where international organisations and governments are able to implement strategies and programmes that take a progressive and non-discriminatory approach. This is in accordance with Principle 4.2 of the Pinheiro

²¹⁴ Interview with UNRWA Gaza, 14.01.13. There are also discrimination issues with refugee status which passes down the male line. If a male refugee marries a non-refugee then the refugee status is passed down, this does not apply if a female refugee marries a non-refugee. Further exacerbating this discrimination is the way in which the women's refugee status is transferred – from her father's card to her husbands when she marries – then back to that of her father's if she divorces. Again, perpetuating the concept of women as property and an example of the UN system perpetuating the discrimination that exists in the community.

²¹⁵ Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles, March 2007, p.36

²¹⁶ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council, 26 December 2011, A/HRC/19/53, para.27

Principles, set out above, which says restitution programmes should seek to implement a gender strategy, particularly where the status quo discriminates against women's right to ownership, either in law or in practice.

ISRAELI MILITARY ACTIVITIES

Blockade

Any discussion about the challenges facing women in Gaza must be set in the context of the Israeli military blockade, ongoing since June 2007. Israel has banned the export of all goods from the Gaza Strip, along with the import of anything it does not deem 'humanitarian'. The result has been the closure of most of Gaza's manufacturing industry and a surge in unemployment to 40 per cent.²¹⁷ The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) says the blockade has triggered "a protracted human dignity crisis with negative humanitarian consequences."²¹⁸ Living conditions, infrastructure, public health, water, sanitation and education have all been impacted.²¹⁹ The construction of new homes has also inevitably been affected by difficulties in importing the necessary materials.

Israeli Military Offensive December 2008-January 2009

From December 2008 to January 2009, a 23-day Israeli military offensive – codenamed Operation "Cast Lead" by the Israeli authorities – claimed the lives of 1,366 people, including 111 women and 430 children. A further 5,380 were injured, including 800 women and 1,870 children.²²⁰ More than 4,000 housing units were completely destroyed, while another 11,500 were damaged. An estimated 75,000 people were displaced.²²¹

Tens of thousands of families fled their homes during the 23-day Israeli military activity, many seeking safety with relatives or inside UNWRA schools. Many returned home afterwards, but those who had lost their homes stayed with host families or rented houses, while hundreds more stayed in tents on the ruins of their houses.²²² The UNRWA schools could not provide for norms of gender segregation and modesty to be observed; a UN Inter-Agency Gender Needs survey found that families who were displaced or lost their homes during the war expressed an acute sense of vulnerability "towards the bodily safety and security needs of their female family members."²²³ Additionally, displaced women

²¹⁷ UNDP, *Gaza: One Year After*, May 2010 p.10

²¹⁸ UNOCHA, *Locked In: The humanitarian consequences of two years of blockade of the Gaza Strip*, August 2009, p.2

²¹⁹ Ibid.

²²⁰ Figures provided by OCHA in *Voicing the needs of Women and Men in Gaza: Beyond the aftermath of the 23 day Israeli military operations*, produced by UNIFEM (2009) p.9

²²¹ UNIFEM, *Towards Gender Equality in humanitarian response: Addressing the needs of women and men in Gaza*, p59

²²² Ibid

²²³ Ibid, p.60

were more likely than other women to say they felt unsafe using a bathing or toilet facility.²²⁴

Women were particularly affected by the consequences of the war. In their report *Through Women's Eyes: A PCHR Report on the Gender-Specific impact and consequences of Operation Case Lead*, PCHR describes widows facing cultural discrimination and economic and social marginalisation in a society where men typically head the household. They report that "it is exceptionally difficult for a woman to live alone, and so widows are forced either to return to their own family home or to re-marry."²²⁵



224 Ibid

225 PCHR, *Through Women's Eyes: A PCHR Report on the Gender-Specific impact and consequences of Operation Case Lead*, p5

LACK OF ACCOUNTABILITY FOR ISRAELI DESTRUCTION OF HOMES

FINDING FROM
FOCUS GROUPS 8

Many of the 67 women who participated in focus group discussions in January 2013 had been displaced as a result of military conflict in Gaza. Thirty-two said their homes or property had been damaged or destroyed during Operation “Cast Lead” or the November 2012 escalation of hostilities in the Gaza Strip. Only a very small number received any compensation for their loss, while more had received help in reconstructing their homes from international organisations.

It is not surprising that so many of the women in the focus had their homes destroyed or damaged. According to the Goldstone Report²²⁶, UNRWA was providing shelter to 50,896 displaced persons in 50 shelters at the height of Operation “Cast Lead”. This is estimated to be a fraction of those who became homeless, most of whom found temporary shelter with relatives. As a result of the destruction thousands of Palestinians were forced to share housing as well as sanitary and water facilities.²²⁷ Meanwhile, the

destruction of much of Gaza's concrete industry during the war, combined with the ever-present blockade, has prevented the timely reconstruction of the homes.

Only five of the female focus group participants whose homes were damaged or destroyed had spoken directly with international organisations. The majority said only their husbands had been involved in any discussions about reconstruction. Most (though not all) felt they should be involved in consultations about their homes being rebuilt.

Compensation from the Israeli authorities is extremely difficult if not impossible to claim. A petition filed by PCHR on behalf of victims highlighted a 2004 Israeli law preventing claims of compensation stemming from “combat operations”.²²⁸ PCHR, a partner of NRC, argues the policies and practices of the Israeli authorities have “effectively contributed to the establishment of an accountability-free zone in the Gaza Strip.”²²⁹

The following case study highlights the complexity and multi-faceted nature of many of the HLP rights issues faced by women in Gaza. In this case, a woman's husband was killed along with three of her children in Operation “Cast Lead”. Her home was also destroyed. Subsequently having to stay with family members and then in accommodation without security of tenure, she faced domestic violence at the hands of her step-son and had to flee with her daughters to the home of her brother where she lives in overcrowded and unsuitable conditions, again with no security.

²²⁶The United Nations Fact Finding Mission on the Gaza Conflict, known as the Goldstone Report, was a team established in April 2009 by the United Nations Human Rights Council (UNHRC) as an independent international fact-finding mission to investigate alleged violations of international human rights law and international humanitarian law during Operation “Cast Lead”.

²²⁷ Goldstone report, para.1243

²²⁸ Palestinian Centre for Human Rights, Israel effectively Denies Palestinian Victims of Operation Cast Lead Access to Justice: PCHR files petition to Israeli High Court of Justice, 21 December 2010

²²⁹ Ibid

CASE STUDY 4

“During the war [in the 2008-2009 Operation “Cast Lead”], our house was shelled. My children were killed and my house was completely destroyed. After they destroyed it, they set it on fire. We lived for five days under shelling and fire. We were not able to leave and ambulances were not able to come rescue us.”

LAILA HUSSEIN AL IRR. GAZA CITY

Laila's entire family were still living in their house during the beginning of the Israeli ground offensive in the Gaza Strip. It was 3 January 2009, and the land next to their house had been targeted with several shells during the night. Fearing for their lives, Laila asked her husband and children to move to her brother's house.

Laila's husband and three of her children were killed during their attempt to flee, when a donkey cart the family was using was directly hit by a shell. Her step-son's wife suffered severe injuries and died the next day, unable to receive adequate medical assistance.

The rest of the family ran and took shelter in a neighbour's house. They stayed there with the dead bodies of their family members for five days before the Israeli military bulldozers surrounded the house and ordered to them to leave immediately, lest the house be levelled with them inside. They left, and an Israeli commander

told them to evacuate the area or they would lose their lives. As the bulldozers got to work, Laila and her remaining family members ran towards the main road under heavy shooting until they reached an ambulance car waiting for injured people. Laila says that when they reached safety, she passed out and lost consciousness. She woke up hearing the sound of her brother in the hospital.

After receiving medical care for some injuries and her miscarriage – she had been pregnant – Laila was discharged. She went to live with her husband's relatives until the end of Operation “Cast Lead” on 18 January 2009. When it was safe, she moved with her four daughters to her brother Hani's, which they shared with Hani's wife and their six children.

The home was overcrowded, so Laila and her step-son Omar bought an apartment from one of her late husband's relatives in the Al Sheikh Zayed housing project.



Laila used money she had saved after receiving financial aid from UNRWA and the local authorities in Gaza, and the apartment was registered in the name of all her late husband's heirs. Before long, however, Omar developed a drug problem and eventually became violent towards Laila and her daughters. After two years they could not stand it anymore, so they moved back in with Hani.

Omar sold the apartment without the other heirs' approval and bought land near where the family lived during the start of Operation "Cast Lead". He purchased the land – located in the ARA, or "Buffer Zone" in Gaza – without once consulting Laila.

Today, Laila and her four daughters live in a cramped 70 square-metre concrete apartment above her brother's house, a two-floor building shared by two brothers and their 16 family members. Laila's apartment consists of two bedrooms, a bathroom and a kitchen. Its roof is made of asbestos and the window frames

hold nylon sheets instead of windows. It was only recently connected to the water and electricity supply.

Laila does not feel safe or have any privacy. Her situation is not in accordance with the customs and traditions of Palestinian society in general, nor with the Bedouin community more specifically, leaving her feeling uncomfortable, too. She feels she and her daughters are a burden on her brothers.

A *Rabita* committee is considering the case of her step-son's sale of her land and property but there is no outcome yet. Her step-son says he does not have the money but has suggested she build a home on the land he has bought. She refuses, saying she would not be safe next to her step-son and in the ARA.

Lawyers from NRC are in discussions with the authorities on providing a separate housing unit for Laila and her children.

“ I don't have any salary nor do I have any money or a piece of land for UNRWA to help me build a new house. I don't have any sons. I have four daughters studying in university and I can barely feed them. ”

14 November to 21 November 2012 Operation “Pillar of Defense”

Since the last full-scale offensive during Operation “Cast Lead”, limited episodes of violence affecting civilians in Gaza have taken place every few weeks. On 14 November 2012, the Israeli military launched an airstrike targeting the Hamas military leader Ahmed Jabari that was followed by eight days of intense military attacks codenamed Operation “Pillar of Defense”. The assault ended with an Egyptian-brokered ceasefire on 21 November 2012.

The operation was reported to have killed 158 Palestinians, 103 of whom were civilians, including 13 women and 33 children. A total of 1,269 Palestinians were injured, again mostly civilians.²³⁰ According to OCHA the Israeli military reported targeting 1,500 sites in Gaza. Almost

²³⁰ OCHA oPt, OPT: Escalation in Hostilities in Gaza and Southern Israel, Situation Report, 22 November 2012, p1.

300 were destroyed or severely damaged, and another 1,700 sustained some damage.²³¹ Between 350 and 700 families are estimated to have been displaced.²³²

House Demolitions and Forced Evictions

Forced evictions and house demolitions are another problem in the West Bank, particularly in East Jerusalem and Area C, often to allow for the expansion or development of Israeli settlements in contravention of international law. The Israeli Committee Against House Demolitions (ICAHD) estimates that as of August 2011, approximately 26,000 homes had been demolished in Palestine (including East Jerusalem) since the start of the occupation in June 1967.²³³

CASE STUDY 5

FATMA²³⁴

AL-ISAWIYA, EAST JERUSALEM

“ About an hour after [the Israeli soldiers] arrived, they started to demolish the house with a huge bulldozer. They even destroyed the wall that separated the house from the neighbour’s land. It was all over by 12.30pm. The house was completely destroyed, left in a huge pile of rubble. ”

Fatma built a new home with her sister and family. On 18 November 2009, it was demolished by Israeli authorities.

“The Israeli soldiers and police were positioned around the house,” she said. “There were so many soldiers around. I had many of them around me, preventing me from going any nearer to the house. I had guns aimed at me and my children. I was trying to keep my son Mohamed²³⁵ and my sister Maisa’s son Khalil from going near the soldiers. They wanted to do something and I was trying to hold them back.

“The soldiers were also taking pictures of us, including the boys, as we stood there watching them. My son started shouting and

cursing at the soldiers, he was so angry. He wanted to do something to stop them but I was holding him back to stop him from running at the soldiers or the house. I couldn’t hold onto Maisa’s son and he was able to free himself and went running into the middle of the soldiers and got into a fist fight with one of them who started beating him.

“Then, about an hour after they arrived, they started to demolish the house with a huge bulldozer. They even destroyed the wall that separated the house from the neighbour’s land. It was all over by 12.30pm. The house was completely destroyed, left in a huge pile of rubble.”

²³¹ Ibid

²³² OCHA oPt, OPT: *Escalation in Hostilities in Gaza and Southern Israel, Situation Report*, 26 November 2012, p2.

²³³ ICAHD, *No Home, No Homeland: A New Normative Framework for Examining the Practice of Administrative House Demolitions in East Jerusalem*, December 2011, p1

²³⁴ Ibid

²³⁵ The family’s names have been changed

A report by WCLAC documents the impact of forced eviction on women, a process that is usually followed by the destruction of the home – with no alternative accommodation provided.²³⁶ The report describes a brutal process in which evictions are carried out by armed soldiers and police who beat or arrest family members.

The WCLAC report also documents the psychological and emotional impact of a forced eviction: the women describe anxiety and distress.²³⁷ The women interviewed expressed particular concern about the impact on their children, who they saw as being disturbed and unsettled by the evictions and subsequent moves into overcrowded living conditions. Women are often the emotional centre and stabilising force of the family, and find themselves having to cope with their own anxiety whilst also caring for others. If they are not able to overcome the trauma their children will also suffer. These findings are supported by a study by Save the Children UK, which concluded that children's psychological health is closely associated with their parents' health.²³⁸

Economic hardship is an almost inevitable consequence of forced eviction. The WCLAC study reveals the enormous costs that families incur during long and drawn out administrative and legal procedures, depriving themselves in order to secure a better home and life for their families. Beyond poverty, women must also face the realisation the money they spent on their homes has been for nothing.

Women interviewed for the WCLAC study testified to losing much more than a place to live, having have lost their privacy and personal space, their freedom and security. None of the women interviewed spoke of being provided with any alternative accommodation by the Israeli authorities after the forced eviction or of any services being provided to them. Many of the women moved in with their extended family, usually their husband's family, others into rented and often inadequate housing. Many spoke of overcrowded conditions and the effect of this on their own state of mind.

The following case study highlights the cross-cutting nature of the challenges faced by women claiming their HLP rights. Jamila Jahalin lives in a Bedouin community in the West Bank and has suffered through multiple displacements as a result of the Israeli occupation. Her home is also under threat because of development plans from the local Palestinian community. Jamila's problems have been further exacerbated by patriarchal norms and traditions: she requires the consent of male family members for any decisions about land and must be accompanied by a man if she leaves the home.

236 WCLAC, *Forced Evictions: Assessing the Impact on Women in East Jerusalem*, November 2010, p19

237 A study by Save the Children UK, "Broken Homes", 2009 found trauma related deterioration in parents' mental health, while one-third of the parents interviewed for the study were in danger of consequentially developing mental health disorders. (p38)

238 *Ibid*, p.39

CASE STUDY 6

JAMILA ODEH JAHALIN. ANATA, WEST BANK

18.10.12

Jamila, 40, has seven children – five boys and two girls. Her husband, whom she married at 15, is unwell and suffers from both physical and psychological disabilities.

“Our family and tribe are originally from Beersheba in the south, but we were displaced in 1948 and came to live in Anata. We were moved again in 2004 to where we live now after the Israelis started to build the Wall.

“In December 2011, I received an order from the Israelis – it was a ‘Stop Work Order’. It was given to me by some inspectors from the Israeli municipality who were accompanied by Israeli soldiers. They told me what it meant and that our home could be demolished, and that I should get a lawyer to deal with it. When I got this, I didn’t know what to do, I was very worried. I talked to my brother and he said he didn’t have any money to get a lawyer.

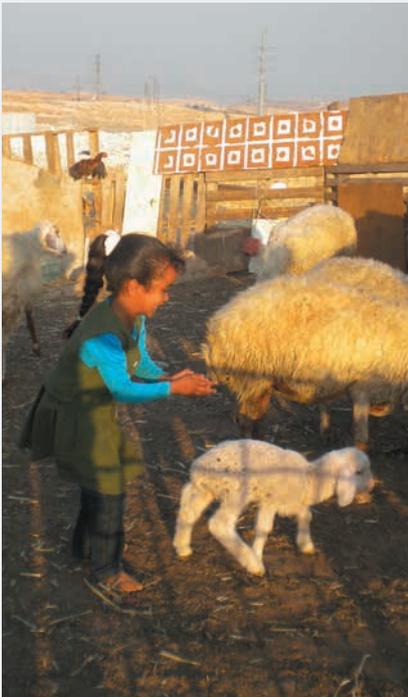
“I was really worried – I couldn’t sleep or figure out what I could do. I asked my brother-in-law for help and he told me to sell our livestock, which my family relies on for our livelihoods. He also said

we should only use the lawyer who he thought was the best.

“As I am a refugee, I get help from UNRWA. Someone there told me to contact NRC. On the same day that I called, a lawyer from NRC came to visit and told me I needed to come with her to see a lawyer. This was difficult as it is forbidden for me to leave my home without the permission of an adult family member. My brother-in-law said he wouldn’t let me go and didn’t care about the papers and what it would mean if we didn’t sort it out. My husband, who is sick, just said the same thing as his brother.

“My brother-in-law has a lot of pressure on him – he is 28 years old and has seven children of his own. He also has responsibility for the family of his brother, who is ill and who has seven daughters and one son. There is also my family.

“Eventually, after speaking to my brother and telling him how important it was, he gave his permission for me to leave and see the lawyer. At first, this meant the rest of the family boycotted me and treated me badly. They said that I would lose the case, and that because NRC lawyer isn’t taking



In Gaza, where approximately 30 per cent of land is state land, many living on that land are at risk of eviction. There are some recent concerns regarding evictions that have taken place from state land in the Abu Amra neighbourhood in Gaza City.²³⁹ At midnight on Sunday, 8 July 2012, police forces in Gaza raided and bulldozed approximately 102 houses. Any remaining buildings or homes were subsequently demolished in February 2013. Police surrounded the area and blocked all routes into and out of the area and in the middle of the night residents were told to evacuate their houses. For families who failed to comply

²³⁹ For full details please see draft document prepared by NRC on the Abu Amra case study which also provides a full legal analysis.

money this means they will not do a good job and that it would all be my fault.

"The NRC lawyer told me they had received an injunction from the court that would keep the status quo. The house wouldn't be demolished, which was very good news. She told me that if the Israeli officials came back I should show them the injunction. The last time an Israeli official came was three months ago. I was really worried so I called NRC. She told me to show them the paper and it worked. My brother-in-law and the rest of the family were happy, and relations became better and things went back to normal.

"Last night the Israelis demolished my neighbours' home because they hadn't got any help. It was bad, but I'm glad I did what I did."

Despite her success thus far, Jamila said a number of problems persist. "We cannot leave the home without the permission of our husbands. We would like to have sessions on defending our homes and protecting them from demolition, but because we can't leave the community, the sessions would have to take place here.

"I'm only allowed to leave the village once every two or three

months to visit my family. If you go any more people start to talk. Still, I am in a better position than others because of my husband – if I need something urgently I can go even after dark. For other women that is completely forbidden.

"The other problem we have here now is with the Palestinians in [the nearby village of] Anata. We live on *waq'f* land, and the Anata villagers are trying to evict us to develop an industrial zone. We wanted to renew the lease from the *waq'f* but it is in the name of my father-in-law, who is now dead. They told me it would cost 3,500 JD (44,940 USD) to change the name on the lease. There is also an issue with the inheritance deed. If I were to be on the new contract the others in the family have to agree to it. I would also have to pay the total debt on the land – another 3,500 JD (4,940 USD) I do not have. I tried to hire a lawyer but it was going to cost 1000 USD, again, money I don't have. I asked my brother-in-law but he said we don't have the money.

"The problem hasn't been resolved: we could still be evicted from our land by the Palestinians in Anata. The Israelis want the land and the Palestinians want to evict us."

“ We cannot leave the home without the permission of our husbands. We would like to have sessions on defending our homes and protecting them from demolition, but because we can't leave the community, the sessions would have to take place here. ”

with this order to evacuate, police officers physically removed residents from their homes, though there were no reported injuries from these operations.²⁴⁰ There is no dispute about the fact that the homes were located on state land and that the residents did not hold legal title to the land, though there was a pending legal challenge to the evictions that the Supreme Court in Gaza had agreed to hear only three days

240 See Al Mezan Center for Human Rights, Gaza City Municipality and Land Authority Demolish Bloc of Houses Near Ministerial Complex in Western Gaza City, 8 July 2012, available online at http://www.mezan.org/en/details.php?id=14777&ddname=houses&id_dept=3&id2=9&p=center (last accessed on 13 August 2012). While Al Mezan reported that there were 220 homes in the neighbourhood, the Land Registration Authority stated that this number reflects the number of families and that the number of homes is 163.

earlier. However, there are serious concerns about the manner in which the evictions were carried out which replicates many of the practices identified above and used by the Israeli government when carrying out evictions and demolitions.

There are plans by the local authorities in Gaza to develop areas of state land to improve the conditions of housing and infrastructure in the areas. According to the Director of the Land Authority, after surveys and plans have been conducted by the Ministry of Housing, agreements have been reached with all the people who have lived in these areas since before 15 May 10. He could not recall any cases where people would have to be evicted as he believed that agreements involving the allocation of 300 square-metres of land in return for payments in instalments had been reached with all those involved.²⁴¹ However this information was contradicted by the Abu Amra case and by interviews with ICLA staff and others.

4.4

ACCESS TO LAND

Access Restricted Area (ARA) in Gaza Strip

Israel imposes an Access Restricted Area (ARA) on land in Gaza between 1,000 and to 1,500 metres from the Green Line, the armistice line drawn following the 1967 War, and six nautical miles at sea from the shore. This constitutes 17 per cent of Gaza's total land area and nearly 35 per cent of its arable land, making the ARA crucially important to Palestinian agriculture.²⁴² An estimated 178,000 people live in these areas and are affected by these measures which impact on livelihoods and access to services such as schools, and seriously impede the maintenance of wastewater and electricity infrastructure.²⁴³ The precise parameters of the ARA are unknown, and Israeli policy is typically enforced with live fire, putting those entering these areas at high risk of being shot.²⁴⁴ The population here has been deemed by the humanitarian community as living in a high-risk area and being at high risk of displacement.²⁴⁵ In a survey on displacement in high-risk areas conducted by Save the Children UK, 75 per cent of respondents living in the ARA said their movement and access is directly impacted by Israeli restrictions. Fifty-five per cent said they could not reach their land within the ARA, and 74 per cent said they faced obstacles to working their land.²⁴⁶

Women face particular problems in accessing work and assets in agriculture. As noted by a UN Women study, women do not choose to enter agriculture as an occupation because:

[E]ntry is determined by having access to land and agricultural inputs, both of which are costly resources beyond the means of individual

²⁴¹ Interview, Director Land Authority, Gaza, 17.01.13

²⁴² OCHA, *Farming Without Land, Fishing without Water: Gaza Agriculture Sector Struggles to Survive*, 25.05.10; OCHA, *Between the Fence and a Hard Place*, August 2010, p.5

²⁴³ OCHA, *Between the Fence and a Hard Place*, August 2010, p5.

²⁴⁴ Ibid, p12

²⁴⁵ Save the Children UK, *'Life on the Edge: The Struggle to Survive and the impact of forced displacement in high risk areas of the occupied Palestinian territory'*, October 2009, p.11-12

²⁴⁶ Ibid, p46-48

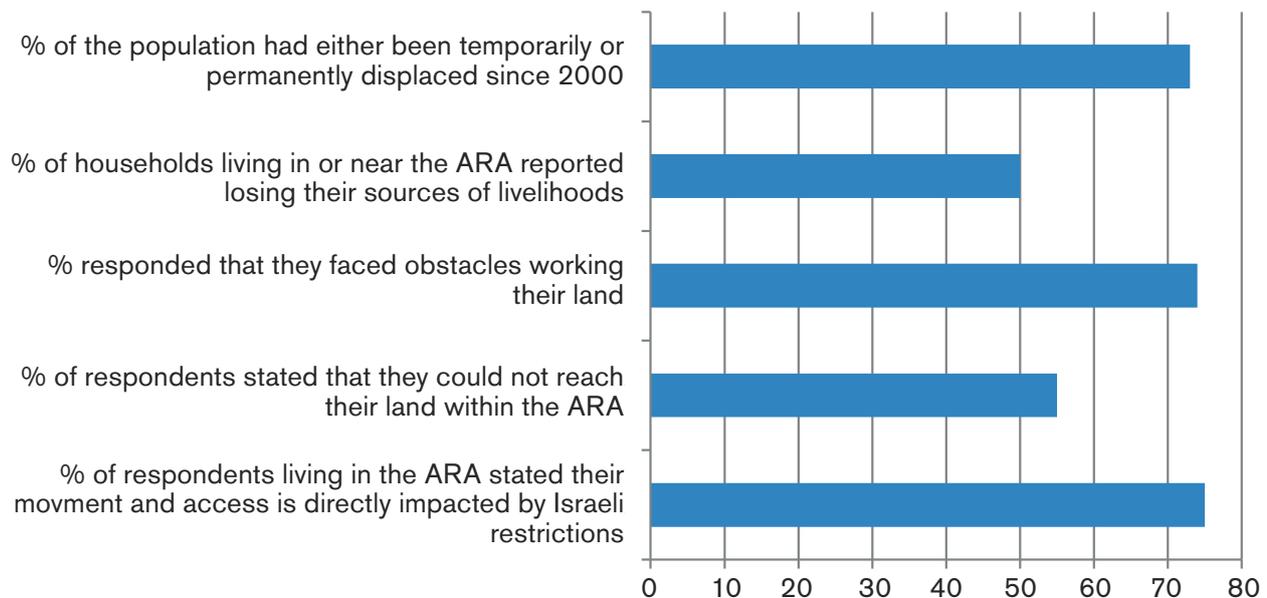
women. These costly resources are usually accessed through family ownership and inheritance structures that favour males. Thus women often start their agricultural lives as “helpers” to parents and then as young wives, continue them as “helpers” to husbands and in-laws.²⁴⁷

In June 2010, the International Committee of the Red Cross emphasised the ARA's impact on rural communities in Gaza:

*Fertile farmland located close to the border fence has been turned into a wasteland by ongoing hostilities, affecting people's livelihoods in many rural communities. The buffer zone imposed by Israel extends in practice over one kilometre into the Gaza Strip, covering a total area of about 50 square kilometres that is host to nearly a third of Gaza's farmland and a large share of its livestock. Agricultural activities in the area are hampered by security conditions. Israel's enforcement of the buffer zone and frequent hostilities have resulted not only in civilian casualties and the destruction of civilian property but also in the impoverishment and displacement of numerous families.*²⁴⁸

According to Save the Children UK, 50 per cent of households living in or near the ARA reported losing their livelihoods, while 73 per cent of the population had either been temporarily or permanently displaced since 2000.²⁴⁹

Selected Findings Reported by Save the Children Relating to Displacement in ARA, 2009



²⁴⁷ UNWomen, UN Gender Needs Study: Voicing the Needs of Women and Men in Gaza, p69

²⁴⁸ ICRC, 'Gaza closure: Not another year!', 14 June 2010, available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-update-140610>

²⁴⁹ Save the Children UK, 'Life on the Edge: The Struggle to Survive and the impact of forced displacement in high risk areas of the occupied Palestinian territory', October 2009, p.11-12.



Seam Zone and the Wall

Restrictions on access to land are also enforced in the West Bank in an area west of the Wall declared a closed military zone for Palestinians.²⁵⁰ About 10 per cent of the total area of the West Bank is located in this “Seam Zone”.

In Gaza, there is no administrative system for regulating farmers’ access to land in the ARA – there are blanket restrictions enforced by live fire. In the West Bank, access restrictions are regulated by a permit regime. Palestinians who reside in the area must obtain a special permit, while those who have land must obtain “visitor” permits to access their farms and water resources through a designated gate monitored by Israeli soldiers. That live fire is not generally used may be down to the presence of Israeli settlers living in these areas of the West Bank. It could also be that the Wall makes it very difficult for those without permits to access the area. .

Palestinians living in the Seam Zone are largely disconnected from the major cities and towns that provide vital services in health, education, employment and administration – as well as from their extended families and communities. Research conducted by WCLAC found the impact on women in these areas is often particularly profound. Not allowed to work outside the home, women are often completely cut off from family, community and vital services.

If the Wall is completed as planned, approximately 33,000 Palestinians holding West Bank Palestinian identification cards in 36 different communities will be located in the Seam Zone. In the meantime, according to OCHA figures, 7,800 Palestinians live there now.²⁵¹ Those aged 16 and older require a permit specifying they are permanent residents of the Seam Zone from Israeli authorities to remain in their homes.²⁵² Family members without permits are not allowed to pass through the checkpoints into the area.

WCLAC documented the impact of living in the Seam Zone on women’s livelihoods. The following case studies highlight those impacts.

²⁵⁰ Bimkom, ‘The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C’, June 2008, p.19

²⁵¹ UNOCHA, ‘The Impact of the Barrier on Health’, Special Focus, July 2010, p.4

²⁵² Ibid, p.6

LAILA AMIR²⁵³.**MAS'HA, BEDYA, CENTRAL WEST BANK****CASE STUDY 7**

Laila's family had run a small plant nursery from their home. The business folded as a result of closures during the second *Intifada* and the building of the Wall, which cut off the house and made it impossible to do business. She now travels to and from her home through a small gate in the Wall that leads to the village and is monitored by the Israelis. She told WCLAC:

"Our financial situation is much worse now. We lost the business because of the closure and then the Wall. My husband now works only two days a week for a project digging wells in local villages. Things are very difficult for us.

"Before the Wall was built, our house was worth about 150,000

Jordanian Dinar (210,000 USD). Now it is worth far less, even if it were possible to sell. We received no compensation for the land we lost to the Wall and the road – we used to have about 3.5 dunams of land, now we only have 1.5. I tried to earn some money making tomato paste at home to sell in the village, but the soldiers would ask me about what I was carrying through the gate and in the end it was just too much trouble, and I don't do this anymore. It's very difficult to move things in and out of the gate; it's quite small and I had to use a small cart to transport things. We have some large pieces of rubbish in the garden – old metal frames and things, but we can't move them, they won't fit through the gate.

" I tried to earn some money making tomato paste at home to sell in the village, but the soldiers would ask me about what I was carrying through the gate and in the end it was just too much trouble, and I don't do this anymore. "

Lack of access to land can also have a discriminatory impact on women's ownership and inheritance of land. One interviewee from a grassroots women's organisation in the West Bank village of Safa, where 78 per cent of land was confiscated for the Wall and Israeli settlements, explained that because the village is in Area C, it is difficult to obtain permits to build property. As a result, she said, women in particular are often allocated land where they cannot build or on the other side of the Wall.²⁵⁴ A *shari'a* court judge agreed, saying the Israeli occupation has not only caused significant problems in terms of access to and confiscation of land, but also in terms inheritance cases, where "land is divided so males receive land on the outskirts of the village and females receive land on the other side of the Wall, because they say she has a husband and she can live with him."²⁵⁵

This also causes problems for organisations and lawyers acting on behalf of those in Area C – many who may face problems accessing these areas, particularly areas behind the Wall – who must obtain documentation and resolve disputes where the jurisdiction lies with the Israeli authorities.²⁵⁶

²⁵³ WCLAC, *Life Behind the Wall: Women's voices from the Seam Zone*, January 2011, p.27

²⁵⁴ Interview 22.10.12

²⁵⁵ Interview, *Shari'a court Judge West Bank*, 21.10.12

²⁵⁶ Interviews, West Bank.

4.5

OVERCROWDING AND INADEQUATE LIVING CONDITIONS

The Gaza Strip has a high population density, with more than 1.7 million people – half of them children and two-thirds of them refugees – living in an area of 365 square-kilometres. Gaza faces an estimated shortfall of 71,000 housing units.²⁵⁷ The destruction of property during Operation “Cast Lead” and the inability of young adults to afford property have resulted in pressure on existing structures. The blockade and resulting lack of construction have exacerbated the situation. Now more than ever, many families are forced to live in overcrowded and unsuitable conditions.

Ibrahim Abu Shammalah from UNDP said overcrowding and a lack of space are serious issues in Gaza:

In the refugee camps they are fighting for a room. There are also lots of difficulties near the borders and problems with electricity. Refugees and everyone suffers from power cuts, unemployment and poverty in the Gaza Strip. Destruction of homes in “Cast Lead” and the siege has led to more abject poverty and unemployment. This needs to be studied. Combined with conservative customs, a discriminatory informal justice system, local customs and tribal justice things are particularly difficult for women. ²⁵⁸

Housing in Gaza's eight refugee camps is often overcrowded, cramped and in poor conditions. Representatives from UNRWA in both the West Bank and Gaza described problems with overcrowding made worse by a lack of space in which families can expand their homes, as well as problems with services such as electricity exacerbated by poverty and unemployment.²⁵⁹ Extra floors are built on top of already-poor housing units, often reaching six or seven floors upwards and expanding outwards outside the maximum boundaries of the camp. Women face particular problems in overcrowded conditions, with a lack of privacy at home and few public spaces where their presence is considered acceptable. Most usually simply stay indoors.²⁶⁰ According to an UNRWA representative in the West Bank, “All the open spaces – the mosque, the square and the street – are men’s spaces”. This means that women, inside the home caring for children or elderly relatives, are more affected by the shortage of water, the uncollected rubbish and the overcrowded conditions.

The large size of most Palestinian families in Gaza – both refugees and non-refugees, and including large numbers of children – means moving in with relatives represents a huge burden on host families, and can lead to tension. When displaced families move in with wives’ families, notes UN Women, a modesty problem is created for the host family’s female

²⁵⁷ UNCT, Gaza in 2020: A Liveable Place?, August 2012, p.9

²⁵⁸ Telephone Interview, Ibrahim Abu Shammalah, Deputy Programme Manager, UNDP, 22.10.12

²⁵⁹ Telephone Interview, UNRWA Deputy Programme Manager Gaza, 22.10.12

²⁶⁰ Interview, West Bank, 24.10.12

members, especially if the husband is not a blood relative.²⁶¹ This is supported by research conducted by WCLAC, which found privacy and modesty were issues for women living in the homes of their husbands' families.²⁶²

Mona Shawa from the Women's Unit at PCHR cites the kind of overcrowding described above as one of the main causes of divorce in Gaza. Families traditionally build extensions on existing homes when sons are married. As a result, married women live with or very close to the extended family and are expected to become part of the existing system. In Gaza, due to poverty and a lack of building materials, a new family's separate space often consists in practice of a single room in the family's existing apartment. Shawa said the consequences for women include harassment and bad treatment from fathers-in-law or brothers.

OVERCROWDING

FINDING FROM
FOCUS GROUPS 9

All 33 women who participated in a discussion organised by *Zakher*, a women's organisation in east Gaza City, said they lived in overcrowded conditions.²⁶⁴ Twenty of the women's homes had been damaged by military conflict and one had been completely destroyed.

One woman described 11 people living in a hallway using hanging sheets as makeshift divisions between boys and girls. Many said overcrowding occurs because adult children cannot afford to buy property, and because of the considerable destruction of property during Israeli military offensives.

In a discussion held in Khan Younis, around half the women said they were living in overcrowded

conditions. One woman said there were 25 people living in her home, forcing her family of eight to sleep in one room. All 25 shared one bathroom. The women articulated a multitude of consequent problems. One woman said she had problems and disagreements with everyone in the house, particularly about how to raise her children. Her parents-in-law felt she should use violence to discipline them but she disagreed. Other women worried about the lack of space for their children and the arguments they had with children from other families living in close proximity. Being controlled by parents- and brothers-in-law in terms of what they could do and where they could go was another concern.

Palestinians living in Area C of the West Bank similarly face overcrowding and poor living conditions because of strict rules imposed by

²⁶¹ UNIFEM, *Towards Gender Equality in humanitarian response: Addressing the needs of women and men in Gaza*, p62

²⁶² WCLAC, *Forced Evictions: Assessing the impact on women in East Jerusalem*, November 2010

²⁶³ Only 13 of the 33 women completed a questionnaire prior to the discussion, and therefore their data is only included in figures referred to when explicitly stated.

Israel on planning and building. Palestinian construction is prohibited in 70 per cent of Area C, and a range of restrictions means it is virtually impossible to obtain a permit to build in the remaining 30 per cent. In practice, OCHA states, the Israeli Civil Administration allows Palestinian construction in less than one per cent of Area C, much of which is already built up.²⁶⁴

Consequently, many Palestinians in Area C live in inadequate and overcrowded housing, or build illegally and risk demolition and displacement. Interviews carried out by WCLAC confirm the known data, which testify to the severe lack of housing for Palestinians in East Jerusalem and Area C on account of the near-impossibility of obtaining a building permit.²⁶⁵ The WCLAC documentation further highlights the poor living conditions of women living in the Seam Zone, and their impact on women and their families.

The Women's Affairs Technical Committee (WATC) works in the Jordan Valley in Area C supporting women's needs for basic services such as playgrounds, paved roads and nearby kindergartens. Its director commented on the adverse effects of overcrowding, which "replicates and reinforces the same mentalities of the father and grandfather when they all have to live together in one house."²⁶⁶

In both the West Bank and Gaza, women are forced into poor living conditions as their families grow as a result of overcrowding. Women described the difficulties of moving in with their parents-in-law and the consequent lack of privacy and private space, along with the impact it has on their state of mind.

CASE STUDY 8

“Even before the Wall was built the area was designated as a green zone, and we could not build or extend and had to use zinc. Now even that is not allowed.”

JAMILA. AL-KHALAYLEH, WEST BANK

Jamila's home is now located behind the Wall between the Israeli settlements of Givat Ze'ev and Gavon.²⁶⁷ She lives in her husband's family home with her husband and their seven children. Restrictions imposed by the Israeli authorities mean they cannot extend or improve the home.

“Part of my husband's house was built more than 50 years ago. It was built properly with cement but for many years it

has not been possible to do any proper construction, so the extensions have all got zinc roofs rather than cement. Even before the Wall was built the area was designated as a green zone, and we could not build or extend and had to use zinc. Now even that is not allowed: we can't do any work on the house despite the fact settlements have been built all around us.”

²⁶⁴ UN OCHA, Special Focus, *Restricted Space: The Planning regime applied by Israel in Area C of the West Bank*, December 2009, p.1, p. 6. They include the following issues as reasons for this: lack of detailed plans for Palestinian villages, the Israeli Civil Administration's restrictive interpretation of outdated plans that do exist and difficulties Palestinians face in providing ownership of land.

²⁶⁵ WCLAC, *Forced Evictions: Assessing the Impact on Women in East Jerusalem*, November 2010,

²⁶⁶ Interview, WATC, October 2012

²⁶⁷ WCLAC, *Life Behind the Wall: Women's voices from the Seam Zone*, January 2011, p14

JD²⁶⁸. AL-KHALAYLEH, WEST BANK**CASE STUDY 9**

JD, who wished to remain anonymous because of worries about potential consequences, told WCLAC about the impact of the Wall on her and her family's livelihood:

"I wish we didn't have the Wall anymore. I want to be able to go back to how it was before. To be able to cultivate our land. To have access to our families and for them to be able to come and see us. If we were able to cultivate our lands our lives would be very different. This is not a life."

JD lives in the Seam Zone in the same village as Jamila with her large and growing extended family. They live in increasingly poor and overcrowded conditions.

"We built a small house next to

our house which was meant to be for [my disabled son], his wife and their four children. They moved into it although it was not really finished, but in 2005 the Israelis demolished it. They had to move back into the main house, but it's so crowded all six of them are living in one room."

"Altogether there are 25 people living in the house and we can't extend it, even though we have a lot of land around the house and there are lots of new houses in the settlements of Givat Ze'ev and Givon just by ours. We only have five rooms, a kitchen and a bathroom. We have to use the rooms we used to use for sheep for people to sleep because it's so crowded."

“ Altogether there are 25 people living in the house and we can't extend it... We have to use the rooms we used to use for sheep for people to sleep because it's so crowded. ”

REGISTRATION AND OWNERSHIP OF LAND

4.6

In a 1995 poll by Nablus-based research unit the Center for Palestine Research and Studies (CPRS), more than 90 per cent of respondents agreed relations between men and women should be based on equality in rights and responsibilities. In the same poll, more than 80 per cent of men and women said women's oppression is an important issue.²⁶⁹ However, high support for women's rights does not necessarily translate into support for concrete changes in gender relations in all spheres of life, particularly in relation to attitudes around women and HLP. Another survey five years later attempted to assess women's access to property and found only 28 per cent of men and a similarly low 38 per cent of women believed women would be able to manage their property on their own (PCBS 2000).

As legal scholars Labadi, Johnson, Hammami and Welchman note: "This indirect question indicates the strong social reservations towards women's independent property ownership which in the concrete is exemplified by the low levels of women owning immovable property

²⁶⁸ Ibid, WCLAC, p.15 .

²⁶⁹ Fadwa Labadi, Penny Johnson, Rema Hammami, Lynn Welchman, *Islamic Family Law and the Transition to Palestinian Statehood: Constraints and Opportunities for Legal Reform*, available at <http://www.law.emory.edu/ifl/cases/Palestine.htm>

(approximately 8% of all women).”²⁷⁰ They also note that despite popular support for an extension of women’s rights in family law, there is “clear male resistance in some areas, most notably in the issue of property claims either in divorce or inheritance.”²⁷¹

These attitudes have meant that women traditionally do not register land or property in their names.²⁷² PCBS found in a 1999 survey that only 7.7 per cent of women in Palestine own or share a house or real estate (5.7 per cent in the West Bank and 11.1 per cent in Gaza). The survey also showed only 5 per cent of women own or share a piece of land (5.4 per cent in the West Bank and 4.3 per cent in the Gaza strip), and only 1 per cent own a private car (1.3 per cent in the West Bank and 0.4 per cent in Gaza). The same survey concluded only 20 per cent of women entitled to inheritance claimed their share.²⁷³

There appear to be no formal legal barriers for women to register their own land, but social and cultural attitudes mean property is rarely registered in women’s names, even when they own or have made substantial financial contributions to it. Maha Abu-Dayyeh, director of WCLAC, said:

Cultural and societal pressures are such that women do not ask for their names to be registered when property or land is bought, even if the woman has contributed financially. This is an issue across all classes including middle-class working women.

Indeed, at least two of the professionally successful middle-class women interviewed for this research confirmed that despite having lived in their homes for decades the properties were not in their names, and they would have no rights to remain there if they divorced.

The fact that much of the land in Palestine is not registered at all is another significant issue. Seventy per cent of the land in the West Bank remains unregistered – the amount is similar in Gaza – and a number of projects in Jerusalem, Hebron and Nablus have done little to change the issue.²⁷⁴ The costs of up to 2,500 USD and complicated procedures associated with registering land were cited as factors by Hanan Al-Shunnar, a lawyer working for the Palestinian Land Authority in Ramallah.²⁷⁵ Al-Shunnar felt that registration could lead to significant improvements for women, bringing ease and clarity from a social and practical perspective, but said the process needs to be simplified first. She also believes the state needs to play a stronger role in providing surveyors to clarify boundaries, as well as providing funding for those who cannot afford registration fees. “There are many challenges when

²⁷⁰ Ibid

²⁷¹ Ibid

²⁷² Interviews carried out in October 2012

²⁷³ Freedom House, *Women’s Rights in the Middle East and North Africa - Palestine (Palestinian Authority and Israeli-Occupied Territories)*, 14 October 2005, available at: <http://www.unhcr.org/refworld/docid/47387b6e2f.html> [accessed 24 March 2013]

²⁷⁴ Interview 20.10.12

²⁷⁵ Interview 20.10.12

women inherit from men. It is common for men to try to prevent women from accessing their inheritance rights. For example, they are told their shares are not worth registering because of the low value of their land against the cost of registering the land. They are told it is better to waive their rights to the land.”

Speaking to NRC, a grassroots women’s activist raised another issue linking inheritance rules and land registration. “The small subdivisions of land make it very complicated to buy and sell land,” she said, and gave the example of her sister, who tried to buy a piece of land but gave up when it became clear there was no certainty over which of her 13 brothers owned the land, or whether she could even access the plot.²⁷⁶ She added: “The fact that land often isn’t registered also makes it difficult as there is uncertainty about ownership.”

The land registration process in Gaza is meanwhile manual, complicated and lengthy. Making matters worse, local authorities have inadequate resources to tackle the issue, a problem borne out by old equipment, small waiting areas for applicants and inexperienced and insufficient staff. The cost of surveyors and lawyers is meanwhile often prohibitively high. As a result, many have turned to other unofficial and insecure “titling” systems. Records indicate only 10 per cent of land transactions are documented with the Palestinian Land Authority.²⁷⁷

The fact that much land is not registered also impacts on those families affected by damage to or destruction of their house who have applied for repair and reconstruction assistance from shelter agencies in Gaza. One of the requirements set out by the reconstruction guidelines adopted by Shelter Sector members in Gaza is proof of ownership documentation relating to the land and/or damaged house. Much of the land in Gaza has not been registered in the current owner’s name and transfers of ownership of land have not always been documented or properly registered with the relevant authorities, creating problems and obstacles for those wishing to claim assistance. Women can often be most affected by these requirements, being far less likely to hold ownership or titling documents. An issue linked to this and highlighted by the focus groups, is that women are also not included in discussions about the reconstruction of homes by reconstruction agencies.

The following case study highlights how this issue together with poverty, inadequate housing and discrimination means that war and conflict can have particularly severe consequences for women.

²⁷⁶ Interview 22.10.12

²⁷⁷ NRC, Housing, Land and Property Law in the Gaza Strip [unpublished draft]

CASE STUDY 10

LAILA RIZIQ ALI INTAIZ 21 JANUARY 2013
TUFA'A NEIGHBOURHOOD, GAZA CITY

Leila has been widowed for 21 years. She has four grown sons between the ages of 21 and 27. Two are severely disabled and cannot move without assistance. One also suffers from a mental disability.

“When I was married I lived with my father-in-law, and after my husband died I stayed with his family for eight years. It was very difficult to live there. My brother-in-law was very difficult to live with: he controlled my life and lives of his parents. He would only give us small amounts of food and I would have to take permission to go outside. He would also beat me and my sons. It was a terrible situation.

“After my father-in-law died my brother-in-law threw me out of the house and I had to go back to my family. My brother-in-law and the rest of the family wanted to keep my children but I didn't let them because I wanted to look after them. – My sons need special care because of their disabilities, and I knew my brother-in-law would treat them badly. Instead we spent two months with my family, who are good people but have a very fragile financial situation themselves. I got some charity from people and was able to buy a small house from my brother-in-law, where I live in now. He would only let me live there after I paid the money; he didn't allow me my inheritance share.

“When we moved in it was just the four walls. Someone helped build a zinc roof and someone else put tiles on the floor. It is only one

room, 32 square-metres, with a small bathroom and a kitchen. We eat, sleep and live in that room, pulling the mattresses down at night, my four sons and I. There are so many difficulties. There is no space at all for any privacy and we have to get changed in the kitchen or bathroom. The house is always a mess because everything is in here and there's no space.

“During the war in 2008-2009 [Operation “Cast Lead”] the walls would shake, and with all the bombs going off around us and hitting buildings near the house a big crack developed in the wall. I worried it was going to fall, so I moved my two disabled sons nearer the door so it would be easier to move them outside if the wall began to fall. The other two and me had to sleep nearer the damaged wall. I didn't feel safe but we had to stay as we had nowhere to go. We could see the bombs exploding through the cracks around the door. I have never felt like that before. It was a very difficult time, and I was scared a bomb would fall on us or the shrapnel would come through. The situation in the house was particularly bad because we only have a zinc ceiling and no concrete so we could hear every sound.

“I didn't go anywhere for help after the war: I didn't know that I could get help for the sort of damage I had. I thought it was just for those whose homes were destroyed.

“We are very poor and rely for money on the Ministry of Social Affairs (MoSA) who provide us with some financial help. One of my sons with a physical disability

“ We eat, sleep and live in [one] room, pulling the mattresses down at night, my four sons and I. There are so many difficulties. There is no space at all for any privacy and we have to get changed in the kitchen or bathroom. The house is always a mess because everything is in here and there's no space. ”

has a mobility scooter, but at the moment the battery isn't working. We've informed them, but it can take two months to replace the battery and meanwhile he can't go out at all. He can only get to the door.

I wish I could do more for my sons. I am so tired; it is very difficult to care for them even with some help from my brothers. I have to do almost everything for them. I take them to the bathroom. They are heavy, and I have my own health problems and problems with my heart."

Leila wanted help repairing the house but needed to show she owned the property. She had no contract and the property was not registered in her name. NRC approached her brother-in-law but he would not co-operate and provide the inheritance deed or

chain of ownership. Although everyone in the neighbourhood knows the house belongs to her, without formal documents Leila cannot get a reconstruction grant.

"Because of these problems I was desperate to get out of the house and make a better home and life for my family. I sold the house and put the money together with some money I inherited from my family's side. I have bought a small piece of land in Gaza City but I can't afford to build a house.

"I am still living in the small house which no longer belongs to me – the person who bought it has not asked me to leave. I hope I will get some help to build a new home on the land I have bought to provide a better life for my children. I am very tired of the situation."



5



CONCLUSION

In Gaza, family law and laws relating to inheritance are key to any consideration of women's HLP rights. Historically and currently, *shari'a* is applicable to family law in Palestine, and women's HLP rights on divorce or widowhood can be denied or ignored. Meanwhile, the rights of women to inherit under *shari'a* are often denied on the basis of custom and tradition.

For women in the Gaza Strip seeking to assert their HLP rights, some of the challenges are gender-specific, such as the denial of inheritance rights and the difficulties over security of tenure faced by divorced or widowed women. Others are conflict-related and impact-specific, with the Israeli blockade and military operations, home demolitions and forced evictions affecting both men and women, but having a gender-specific impact. Often these issues are multi-layered and multi-faceted, which is illustrated by some of the case studies documented for the research.

The economic situation in the Gaza Strip, with high unemployment and the majority of the population living below the poverty line, is such that claiming inheritance rights can be crucial. The denial of inheritance on the basis of customs and traditions has important ramifications, since in Palestine, as in many other societies, inheritance is a primary means by which wealth and resources are transferred in societies and in families. As noted by the Special Rapporteur on adequate housing: "To be excluded from the process of inheritance reinforces women's lack of autonomy and equality and jeopardises in a very direct way their right to adequate housing."²⁷⁸

In Gaza, the context of economic crisis worsened by years of the blockade and conflict, has resulted in an inevitable competition for ever-scarcer resources. Land and assets acquired through inheritance provide a vital source of financial security for asset-poor women and can make a vital difference to family's survival during the protracted economic crisis.

Women are increasingly willing to claim their inheritance rights as a result of increased awareness-raising and the availability of assistance through lawyers and NGOs. The consequences of claiming their inheritance, however, almost inevitably leads to a breakdown of their relationships with their brothers and other family members. There clearly also remains a significant proportion of women who are unwilling to claim their inheritance, either because of fear of the consequences or because of a lack of information about where to go for assistance. Women are deterred from claiming their inheritance rights by the threats from their families of being cut off and becoming socially isolated. Families are very important in Gaza society, especially as the expectation for women is that they will return to their families if they are divorced or widowed, and brothers are expected to be women's life-long protectors. Losing this contact may have very serious consequences for women and illustrates why many women remain reluctant to claim their rights.

²⁷⁸ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council, 26 December 2011, A/HRC/19/53, para.23.

These attitudes have meant women traditionally do not register land or property in their names.²⁷⁹ PCBS showed in a 1999 survey that only 7.7 per cent of women in Palestine own or share a house/real estate (5.7 per cent in the West Bank and 11.1 per cent in Gaza). The survey also showed only 5 per cent of women own or share a piece of land (5.4 per cent in the West Bank and 4.3 per cent in the Gaza strip), while only 1 per cent own a private car (1.3 per cent in the West Bank and 0.4 per cent in Gaza). The same survey concluded only 20 per cent of women entitled to inheritance claimed their share.²⁸⁰

Lack of access to land can also impact women's ownership and inheritance of land in a discriminatory manner. In both Gaza and the West Bank, overcrowding forces women in particular into poor living conditions as families grow. Moving in with parents-in-law and the consequent lack of privacy and private space meanwhile have a considerable impact on women's mental health.

There are clear links between gender-based violence (GBV) and women's HLP rights, yet organisations seem to be failing to make the connection in their programmes and interventions. Feeling safe and secure in your home and having access to legal mechanisms to ensure that safety, whether in the marital home or a refuge, is key to protection from GBV. While the hurdles for women in accessing their HLP rights remain substantial, increased awareness, advocacy and initiatives on the part of civil society, international NGOs, UN agencies and local authorities can play a vital role in improvement women's enjoyment of their rights.

279 Interviews carried out in October 2012

280 Freedom House, *Women's Rights in the Middle East and North Africa - Palestine* (Palestinian Authority and Israeli-Occupied Territories), 14 October 2005, available at: <http://www.unhcr.org/refworld/docid/47387b6e2f.html> [accessed 24 March 2013]

6



RECOMMENDATIONS

6.1

TO THE ISRAELI GOVERNMENT

- ▶ **Recognise and apply International Humanitarian Law (IHL) and International Human Rights Law (IHRL) for women in Palestine:** Recognise and uphold the application of both IHL and IHRL to both the West Bank, including East Jerusalem, and the Gaza Strip.
- ▶ **Uphold application of CEDAW in relation to Israeli policies and practices in Palestine:** In particular, recognise the application of CEDAW to Israeli practices and policies in Palestine, including the acute impact of forced evictions, house demolitions and military activity on women's right to adequate housing.

6.2

TO THE PALESTINIAN AUTHORITY AND LOCAL AUTHORITIES IN THE GAZA STRIP

- ▶ **Appoint additional women as judges:** There are currently three women judges out of 37 in the civil courts in Gaza – an important step forward. Still, a broader shortage of judges needs to be addressed, and future recruitment processes should see local authorities and members of the PLC in Gaza encourage female applicants to apply.
- ▶ **Remove barriers for women as *mukhtars* (mediators):** While several organisations have provided training for women to become *mukhtars*, to date these women have not been formally recognised nor registered as official *mukhtars*. Local authorities in Gaza, given their elevation of female judges, should consider encouraging and endorsing women as *mukhtars* in Gaza.
- ▶ **Treat gender and women's rights as cross-cutting issues:** All senior government officials, particularly judges and those in the rule of law sector, must be given the opportunity to attend gender and women's rights training. Gender should not be confined to the remit of one expert or to the Ministry of Women's Affairs.
- ▶ **Provide joint ownership and tenancies for married couples:** In accordance with recommendations from the SRAH and CEDAW committee, joint tenancies or ownership should be granted to married couples rather than "heads of households" when allocating new housing as part of state housing projects.
- ▶ **Implement CEDAW:** In accordance with the PA President's declaration endorsing CEDAW, the PA and the President's Office should set out the practical steps it is taking to comply with the convention.

TO UN AGENCIES AND INTERNATIONAL NGOS

- ▶ **Provide security of tenure to women in UNRWA housing:** UNRWA housing, both existing and proposed, is held through rights of usage contracts or “undertakings” that provide for a named applicant. Although the rest of the family is named on these forms, it is clear that it is almost always the male who is named as the “head of household”. In accordance with recommendations by the SRAH and the CEDAW Committee, serious and careful consideration must be given to ceasing this practice and including both husband and wife as named beneficiaries, thus providing security of tenure to both.
- ▶ **Alter UNRWA refugee cards:** Women should not be included as additional members on their fathers’ or husbands’ cards. This perpetuates the idea that women’s rights are connected to their relationships with men, along with existing discrimination in society. Consideration must be given to alternative practices of registration that ensure women are seen as individuals and equal rights holders.
- ▶ **Consult women in reconstruction programmes:** All UN agencies and NGOs should consider their obligations to ensure women’s security of tenure in shelter and housing programmes. Women’s needs should be taken into account when building reconstruction projects and new housing programmes, and women should be consulted about reconstruction programmes that involve the reconstruction or repair of their homes. Women should also be involved as decision makers and participants in any plans and proposals for large-scale housing projects that will affect them and their communities.
- ▶ **Involve women’s organisations:** Women’s organisations do not have any representation on the shelter sector. They should be encouraged and invited to participate in the Shelter Cluster and Protection Cluster.
- ▶ **Establish links between GBV and HLP programmes:** There have been welcome developments in training around GBV and referral processes by UNDP, UNRWA and other international organisations. However, few links have been made between GBV and HLP. There are no powers to exclude violent men from the home, and women often lack the security of tenure that would enable them to remain at home in these circumstances. More consideration should be given to how GBV links with a lack of women’s security of tenure, and to what programmes can be developed around this issue. This could entail reforming criminal law to include provisions that exclude violent men from their homes, as well as introducing measures to increase security of tenure for women.
- ▶ **Increase advocacy efforts in relation to impacts on women:** Advocacy efforts written in shadow reports and reports to special rapporteurs and directed at Israeli authorities should highlight the impact of Israeli military operations on women, as well as the destruction of homes, and call for accountability. Case studies collected by NRC ICLA staff and other NGOs can be effective at highlighting this impact and the need for accountability.

6.4

TO NGOS AND CIVIL SOCIETY

- ▶ **Continue to expand work on women's inheritance rights:** A number of women's organisations, CBOs and NGOs have been working on raising awareness of women's rights to inheritance. This work should be continued and expanded to ensure women and men in hard-to-reach communities are also targeted. This work should also include information about where to find appropriate legal and other support.
- ▶ **Address consequences for women who claim their HLP rights:** Difficulties with family members have been a major side effect for women who have been encouraged to claim their inheritance rights. Indeed, the majority of focus groups participants reported being ignored by or cut off from their families. The NGOs and CBOs working with these women should follow up with them and provide them with support.
- ▶ **Embrace opportunities to empower women:** Advocating for women to take on leadership and decision-making positions within the HLP sector helps ensure their needs are heard, addressed and incorporated into HLP structural and policy reform. The work by WAC on training and developing the skills of women *mukhtars* is highly relevant here, and there is scope for developing and extending this work to involve more women as *mukhtars* or decision makers in other capacities.
- ▶ **Raise awareness about documenting women's financial contributions to the purchase of land and housing:** Women's inheritance rights tend to get the most attention, but consideration should be given to educating women about formally registering or otherwise documenting their financial interests in HLP to prevent displacement. Organisations should consider whether to join or initiate campaigns similar to that launched by the PWWSD in 2012 in the West Bank on divorced women's housing rights
- ▶ **Advocate for the exclusion of violent men from homes:** Consider the formation of a coalition to advocate for law reform that provides protection for victims of domestic violence and enhances their security of tenure. One option is to reform criminal law to exclude perpetrators of domestic violence from the home.
- ▶ **Harmonise land law and law reform:** Current land law is a mix of Ottoman, British and Egyptian law. Meanwhile, the passage of land law reform through the PLC has stalled, creating an opportunity to lobby for amendments to the proposed law to reflect the need for women's security of tenure and recognise matrimonial home rights.



European Union



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